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THE VALUE OF INTERNATIONAL LAW IN ESTABLISHING CO-OPERATION AMONG NATIONS [1]

By the Rt. Hon. Viscount Jowitt, Lord Chancellor

I welcome the opportunity of addressing the Grotius Society at this time of such importance to those who believe in the possibility of a new and better international order founded on the rule of law.

It is fitting that one of the subjects of tomorrow's conference should be the influence of international law on international conduct. I think it is fitting, because Hugo Grotius, who lived in times as disturbed as our own, when the claims of the sovereign State were being asserted to their full extent, never lost his faith in the ultimate power of the law to regulate and control international conduct. The story of his life resembles that of many jurists and scholars of recent times. You will remember that it was after his appointment as Advocate-Fiscal of Holland at the early age of twenty-four that Grotius' public career in his own country was cut short by his sentence to lifelong imprisonment by the verdict of a packed court, and it was in Paris, to which he had escaped, that in 1625 he published the book on which his fame rests today. Perhaps his subsequent career as Swedish ambassador to the Court of France suggests a breadth of outlook of which Governments since that time have not always shown themselves capable.

It is an easy matter for anyone looking at the state of the world today to be a prophet of disaster, but this seems to me to be a

[1] Address delivered at the dinner of the Grotius Society held at Lincoln's Inn on July 11, 1947, on the occasion of its International Law Conference.

short-sighted and a superficial view. Let me for one moment consider the very significant difference between the function of international law as it appeared to Grotius and its application today. He was throughout concerned to regulate war and is perpetually considering what is a just and what an unjust war. Nor did this approach, as it seems to me, fundamentally change during the 250 odd years separating the death of Grotius and the Hague Conventions of 1899 and 1907 which set out the rules according to which the game of war must be played. But what a change we have witnessed in our lifetime! Today we are concerned not to regulate war but to eliminate it. A cynic may say that this is because nobody today can be trusted to observe the rules, but this, I think, is to miss the point. When the Pact of Paris was signed in 1928 those same cynics—among them, I am sorry to say, there were to be found international lawyers—were loud in proclaiming that this was just another scrap of paper which embodied no more than pious aspirations. I imagine it was as much of a shock to them as it was to the prisoners themselves when the International Military Tribunal at Nuremberg—over which Lord Justice Lawrence, as he then was, presided with such conspicuous dignity and impartiality—held that the Pact of Paris meant precisely what it said and that the planning of aggressive war was a crime. What a great, indeed a memorable, advance on all previous theory this is! Now the statesmen and politicians, the schemers and planners, are as answerable at the Bar of Justice as the soldiers, sailors and airmen who violate the laws of war in their conduct in the field.

I think there is no doubt that this development helps to mark an inroad on the doctrine of the sovereign rights of States. In a paper which he read before this Society during the war, Dr. Idelson traced the growth of the conception of international law regulating the mutual relations between sovereign States who stood in regard to one another (in Hobbes's phrase) 'in continual jealousies and in the state and posture of gladiators'. An objectionable state indeed! But the law of nations had in early times a different meaning—the common law of all nations. Formerly stress was laid on the moral nature of international law and Shakespeare could say, in Troilus and Cressida, that 'the moral laws of nature and of nations speak aloud'. Now I believe that this century has already seen developments which give us fair ground for hope that the outlook of Hobbes is gradually coming to be regarded, by the man in the street as much as by the lawyer, as something barbarous if not outmoded. Let me remind you that before Hitler set the clock back in 1933, the Permanent Court of International Justice had in the ten years between 1922 and 1932 decided some thirty-eight cases,

a record which, as Sir Cecil Hurst has said, well bears comparison with the early years of the Supreme Court of the United States. By 1939, some thirty-nine nations, including, I am glad to say, the United Kingdom, had signed the optional clause whereby they accepted the compulsory reference to arbitration of disputes in which they are concerned—a really remarkable state of affairs when one considers the hostility and suspicion with which the principle of compulsory arbitration had been regarded at the Hague Conferences at the commencement of the century. The Permanent Court has, of course, now been replaced by the International Court of Justice, but this is little more than a change in form and the rules providing for the new court are almost identical with those of its predecessor, including the provision for acceptance of compulsory jurisdiction. I can see no reason to doubt, therefore, that the International Court of Justice, on which this country is so well represented by Sir Arnold McNair, will be able to build successfully on the foundations laid by the old Permanent Court.

My own belief is that, in spite of the international misunderstandings of which so much is made by the writers of headlines, there is today a measure of co-operation between States, and between men reared in very different legal and political systems, which would have been thought quite remarkable fifty years ago. To secure this co-operation, unceasing work is done through international agencies of many different kinds, which is very often unspectacular and quite unnoticed by the popular press.

I believe that the chances of agreement are enormously increased when those concerned share in some degree a common intellectual discipline such as the law provides, in spite of the many differences in outlook between the common law and the systems founded on Roman law, to which one must now add the further differences of the Soviet legal system. The outstanding example of success in spite of such differing attitudes was, of course, the Nuremberg trial, and no one can say that this was unspectacular work in which the man in the street had no concern, or that political passions were not deeply involved.

Gradually, and through advance along such lines as these, I think that the nations are coming to see that, in the world of the atomic bomb, unrestricted national sovereignty is a luxury which we cannot afford and which is really hopelessly out of date.

Patriotism may not be the last refuge of a scoundrel as Dr. Johnson said it was, but it certainly must be moderated to suit the altogether larger concept of world order. In his opening speech at the Nuremberg trials, Justice Robert Jackson repeated Coke's famous words to James I when the King had expressed the aspiration

to rule by Divine Right—'Rex est sub Deo et sub lege'. The Nuremberg trial showed the world that this maxim applies now not only to a Sovereign in his own country, but to sovereign States in their relationship with the rest of the world. Now that the common man everywhere, as I believe, is coming to recognise this basic truth, international lawyers have a part of enormous importance to play in showing that the law provides a means for the settlement of disputes far surer, far cheaper and far more just to all concerned than reliance on the old cry of 'My country right or wrong'.

The framework of a new world order has been established in the United Nations Organisation, and the principles which are to guide its administration have been declared in the preamble to the Charter to the United Nations in words which came from the pen of one of the great lawyer-statesmen of the Commonwealth, a Bencher of the Middle Temple, who learned his law at Cambridge and the Inns of Court, Field-Marshal Smuts. In that preamble Smuts, interpreting the spirit of English jurisprudence says:

> We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
> To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
> To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
> To promote social progress and better standards of life in larger Freedom,
> And for these ends
> To practise tolerance and live together in peace with one another as good neighbours, and
> To unite our strength to maintain international peace and security, and
> To ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used save in the common interest . . .
> . . . have resolved to combine our efforts to accomplish these aims.

And it is, in my view, of great importance that, in the very first chapter of the Charter which is entitled 'Purposes and Principles', it is expressly stated that the adjustment or settlement of international disputes should be brought about 'in conformity with the principles of justice and international law'. There you have a categorical recognition of the part which international law and

justice are destined to play in the preservation of peace and in which the contribution of a Society like yours is certain to prove of great value.

It is, of course, true that many principles of international law lack at present general recognition and are not embodied in a code universally accepted by all the civilised nations of the world. But the task of codifying the rules of international law is now entrusted, by Article 13 of the Charter, to the General Assembly of the United Nations, one of the main objects of which is declared to be the 'encouragement of the progressive development of international law and its codification'. How best that codification can be accomplished is now being discussed by the United Nations and has also formed the subject of an admirable paper read to your Society by your distinguished President last year. In that task of codification, the Anglo-American school of international law is bound to make a prominent contribution and to take into account the problems of war and peace discussed in the thirty odd volumes of the 'Transactions' published by your Society in this country and of the forty odd volumes of the 'Journal' published by the American Society of International Law in the United States.

It is also axiomatic to say that the progressive development of international law must, in the modern world, be based on human rights and the fundamental freedom of the individual. This is a natural evolution of the progress made by international law to look increasingly to the interests of the 'common man' rather than to the interests of States. You have already discussed, at the International Law Conference held by your Society in June, 1945, an important report on 'International Law and the Rights of the Individual' prepared by Lord Porter's Committee. And it is only the other day that my good friend, Mr. Ernest Bevin, published from the Foreign Office a United Kingdom draft of an 'International Bill of Human Rights', inspired by the same principles, which defines for 'all the men in all the lands' the human rights and fundamental freedom that we hope to establish and secure.

The members of the Grotius Society will not have failed to observe the proposal of Article 7 of the draft that any one of the parties which is found by a resolution of the General Assembly, adopted by a two-thirds majority, persistently to have violated the provisions of this Bill of Rights shall be deemed to have violated the principles of the Charter of the United Nations and shall, therefore, be liable to expulsion from the United Nations Organisation.

To establish these freedoms not merely in the terms of the Charter but also in actual fact for all the men and women of all the lands is the task to which international lawyers of the Grotius

Society and of other kindred societies are now called. It is, so to say, the very vocation of our day and generation. In the effort you make to uphold these principles, you will, I feel sure, be fortified by the knowledge that the Government of this country is fully determined to support, by every means in its power, the United Nations Organisation, and to contribute towards the maintenance of the supremacy of law and order in international affairs—a principle which, unfortunately, some nations, even in modern times, appear to ignore.

In the pursuit of your aims for the triumph of the rules of international law, in common with international lawyers all over the world, I very sincerely wish your Society all success and God speed.

A SURVEY OF PROGRESS TOWARDS PAYMENT OF WAR DAMAGE COMPENSATION IN EUROPE*

By E. A. S. Brooks, M.A.

The purpose of this article is to consider the degree of success so far achieved by European countries in providing compensation for loss of or damage to property due to the war, and to consider the position of British subjects [1] under foreign war damage legislation.

In contrast with the arrangements made after the war of 1914–1918, when claims by British subjects for compensation for loss of or damage to property in Allied territory were included among those to be met out of general reparations, the principle now followed by the Government in the United Kingdom in relation to corresponding losses and war damage in the 1939–1945 war is that compensation should be paid by the Government of the country where the war damage or loss occurred. To writers upon international law this reflects the principle that in matters primarily concerning immovables the lex situs applies; to others the view has great merit because of its simplicity—as the compensation can be assessed, and the title to the property considered by the authorities best able to deal with the claim.

Before considering foreign legislation it may be helpful to record the position of war damage compensation in the United Kingdom, as it is the habit of British subjects to compare or contrast the treatment which they receive abroad with that which they receive at home.

In the war damage legislation passed in the United Kingdom from 1939 onwards,[2] there has been no differentiation in principle

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1 Where a Dominion was a separate signatory to the unanimous Resolution No. 3 of the Final Act of the Paris Conference on Reparation, the application of foreign war damage legislation to nationals of that Dominion will, it is thought, depend upon the foreign legal interpretation of such legislation, or upon any separate agreement negotiated by H.M. Government in the signatory Dominion with the foreign Government concerned.

In the same way, the scope of the term ' British subjects ' in foreign legislation or international agreements, while including all British subjects in the United Kingdom, does not necessarily include British subjects resident in other parts of the British Commonwealth of Nations, and the scope of the term ' British nationals ', whether or not it includes British protected persons, depends upon the definition in the particular instrument. See, for example, the Anglo-French Agreement of December 3, 1946 (Cmd. 7012), where the expression ' British subjects ' excludes British protected persons.

2 War Risks Insurance Act, 1939; War Damage Act, 1941; War Damage (Amendment) Act, 1942; War Damage Act, 1943.

between British subjects and foreign nationals, or between British companies and foreign companies. Property both movable and immovable, if situated in the United Kingdom was covered by that legislation without regard to the nationality [3] of the owner. A contributory scheme was given statutory force and all owners of land and buildings were required to contribute [4] at the rate of 50 per cent. of the annual value of the property as determined for purposes of the Income Tax Acts.

The damage mounted up while the legislation was being organised to meet it, and payments already made to those who suffered losses have greatly exceeded the total amount of the contributions made by British and foreign owners. As a matter of Insurance, the risk could not be estimated, but it is interesting to note that under several of the war damage compensation systems now in operation, notably those of Norway, Denmark, and under the Philippine Rehabilitation Act, 1946 (which is the war damage compensation scheme set up under legislation in the U.S.A. and applying to the Philippine Islands), insurance, or an insurable interest in property is the test by which compensation is assessed.

Under the United Kingdom legislation, registration of losses, assessment of claims, and payment, followed in close succession; and in so far as the contributions did not cover the cost, part at least of the payments received by many foreign nationals was met by H.M. Treasury out of money provided by general taxation in the United Kingdom. It is to be assumed that money expended by the Treasury for this purpose will be recovered out of reparations under the peace treaties.

Acceptance of the principle that war damage compensation for damage to property should be paid by the State in whose territory it occurred is implied, but not specifically acknowledged, in the unanimous Resolution No. 3 of the Final Act of the Paris Conference on Reparation from Germany dated December 21, 1945.[5]

The wording of the resolution is as follows:—

> 'The Conference unanimously resolves that, in the administration of reconstruction or compensation benefits for war damage to property, the treatment accorded by each signatory Government to physical persons who are nationals and to legal persons who are nationals of or are owned by nationals of any

[3] British Nationality and Status of Aliens Act, 1914, s. 17.

[4] Under s. 78 of the War Damage Act, 1943, no contribution was required from a foreign State, the Sovereign of a foreign State, the Envoy of a foreign State accredited to His Majesty, a member of the retinue of such an Envoy, or from a person to whom immunities and privileges are for the time being extended under s. 1 or 2 of the Diplomatic Privileges (Extension) Act, 1941.

[5] Cmd. 6721, p. 14. Referred to in this article as 'the resolution'.

other signatory Government, so far as they have not been compensated after the war for the same property under any other form or on any other occasion, shall be in principle not less favourable than that which the signatory Government accords to its own nationals.

In view of the fact that there are many special problems of reciprocity related to this principle, it is recognised that in certain cases the actual implementation of the principle cannot be achieved except through special agreements between signatory Governments '.

The signatory Governments were, Albania, U.S.A., Australia, Belgium, Canada, Denmark, Egypt, France, the United Kingdom of Great Britain and Northern Ireland, Greece, India, Luxembourg, Norway, New Zealand, the Netherlands, Czechoslovakia, the Union of South Africa, and Yugoslavia.

The resolution is, it is submitted, like the Bretton Woods resolutions, as effective as a formal agreement between the parties to the resolution. Some of the signatories have proceeded to act upon it by enabling British subjects to register particulars of war damage under their legislation without further formality. In the Netherlands, for example, a Decree of September 3, 1947, gives national treatment to British subjects belonging to the United Kingdom of Great Britain and Northern Ireland.

Owing to the wording of the last paragraph of the resolution there would be no ground of complaint by the other signatories, if a further special agreement was thought necessary, as the ' special problems of reciprocity ' are matters of considerable difficulty, and are well known.

THE ANGLO-FRENCH AGREEMENT OF DECEMBER 3, 1946

An example of an agreement arrived at after consideration of ' special problems ' is the Anglo-French Agreement of December 3, 1946 [6] under which, ' British subjects,[7] corporations, and associations, whose property in France has been lost or damaged as a result of the war ' are entitled to ' treatment as regards compensation equal to that accorded to French nationals in respect of similar loss or damage. Any corporation or association in which the French and British interests together constitute a majority holding or control, will receive treatment equal to that accorded to corporations or associations in which the majority holding or controlling interest is British or French '.

[6] Cmd. 7012, Treaty Series No. 60 (1946).

[7] In this Agreement the scope of the term ' British subjects ' does not extend to include British protected persons.

That Agreement is believed to be the only one yet entered into between H.M. Government in the U.K. and a signatory of the resolution separately from the resolution itself, and a considerable number of claims by British subjects are now proceeding towards obtaining war damage compensation under French law.

The scope of French war damage legislation [8] is somewhat limited, and its objective is to rehabilitate homes in France with necessities, rather than to give compensation for actual losses sustained. Thus no compensation is available for loss of luxury articles such as yachts and jewellery; furthermore, where the claimant does not intend to reconstitute his home in France the compensation payable will not exceed one-half of what he would otherwise be entitled to receive.

The Anglo-French Agreement of December 3, 1946, does not cover claims for which no compensation is available under French legislation and there is consequently no redress for any form of war loss or prejudice arising from internment, loss of luggage or of money, or from sequestration of property and funds of British subjects by the German occupation authorities.

Among British nationals whose property abroad has suffered war damage, there is a good deal of misunderstanding of the position of foreign governments in international law, but a strong feeling exists that there is a ' right ' to compensation in a broad general sense, and that this ' right ' exists against the German people. This misunderstanding arises partly out of a natural confusion between (a) the rights granted to individuals under municipal law, for example, rights to compensation for war damage, and (b) the rights under international law accruing, under treaty or otherwise, to reparation or compensation for injury or loss suffered in the war. The fact that the resolution may affect the satisfaction of claims for compensation, by making them dependent upon the varying legislation of different allied States is not perhaps, sufficiently realised. Furthermore, it is too early, yet, to estimate the true import of the words ' so far as they have not been compensated after the war for the same property under any other form or on any other occasion '.

[8] The Law No. 46—2398 of October 28, 1946 (Journal Officiel of October 29, 1946) is the basis of French war damage legislation. A Memorandum of Advice was issued by H.M. Embassy in Paris in 1946, giving detailed guidance to British subjects upon the procedure for the presentation of claims. Registration of claims must be completed before December 31, 1947, and all communications should be addressed in French to the Departmental Delegates of the Ministère de la Reconstruction et de l'Urbanisme at the ' Chef-lieu ' of the Department in which the loss or damage occurred.

PROVISIONS OF PEACE TREATIES COVERING WAR DAMAGE

It is interesting to international lawyers that in the economic clauses of the Peace Treaties with Italy, Hungary, Finland, Roumania, and Bulgaria, 'rights' are given to 'United Nations nationals' which, by definition,[9] means:—

> 'individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with [the ex-enemy State].
>
> 'The term "United Nations Nationals" also includes all individuals, corporations and associations which, under the laws in force in [the ex-enemy State] during the war, have been treated as enemy'.

The rights given to nationals of the United Nations include, for example, the right to the restoration of all legal rights and interests and the return of property in the ex-enemy State, 'as it now exists', and the 'restoration to complete good order', of the property so returned. United Nations nationals and their property are also exempt from 'exceptional taxes, levies or imposts imposed on their capital assets' in the ex-enemy States 'for the specific purpose of meeting charges arising out of the war', or of meeting the costs of reparation payable to any of the United Nations, or (where applicable), the costs of the occupying forces.

While it is true that these rights are given to individuals by virtue of their status as nationals of sovereign States in the first part of the definition clause quoted above, a considerable number of persons who may not retain the nationality of one of the United Nations, or who may be stateless, may well be entitled to rights under the latter part of the definition simply as individuals, if they can prove that under the laws in force in the ex-enemy State against which the claimants seek to establish their rights, during the war they have been treated as enemy.

It is arguable that this is a true instance of an individual being given rights as such under international law. Since, theoretically, the rights arising under the peace treaties are the rights of the States, parties to the treaty, it may be difficult for a stateless person, who is entitled to a benefit under the treaty, to find out which Government he should call upon to take up his claim. He would probably have to get all the Allied and Associated Powers, party to

[9] Treaties of Peace with Italy, Part VII, Article 78; Roumania, Part VI, Article 24; Bulgaria, Part VI, Article 23; Hungary, Part VI, Article 26; Finland, Part V, Article 25.

the relative treaty to take up his claim in concert. Alternatively it might be said that it is for the United Nations to protect the interests of these individuals, though there does not appear to be any enabling provision in the Charter of the United Nations. Perhaps the answer is that the State, party to the treaty, in which he is domiciled, should take up his claim.

War damage to property is covered by the provision in the peace treaties that the ex-enemy State [10]:—

> ' shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in —— he shall receive from the —— Government compensation in —— currency to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered '.

When considering the compensation which may be assessed as being payable under War Damage compensation legislation in the Allied States, it will be of importance to note that in these terms which have been imposed by the Peace Treaties providing for war damage compensation, it was found desirable, to accept a provision for compensation in local currency ' to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered '. But the relevant Articles go on to provide that ' In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to —— ' (nationals of the ex-enemy State concerned).

Whether any agreement will be reached on similar provisions under which individuals may have rights against the German State or against any separate parts of it, remains uncertain; no general settlement with Germany is yet under negotiation.

The general picture of the post-war organisation of machinery under which compensation may become payable is:—

(1) That war damage to property situated in the European ex-enemy States, other than Germany, is covered by the respective Peace Treaties mentioned above.

(2) That war damage inflicted outside the territories of those ex-enemy States and in Allied territory is covered either by the reparations provisions of the Peace Treaties, or by the resolution,

[10] Treaties of Peace with Italy, Article 78, para. 4; Roumania, Article 24, para. 4; Bulgaria, Article 23, para. 4; Hungary, Article 26, para. 4; Finland, Article 25, para. 4.

but no provision yet exists for damage to property in Germany though owned by Allied nationals.[11]

(3) That internal municipal legislation of States may provide for compensation.

It is to be noted that the resolution, is a part and only a part, of the Final Act of the Paris Conference in which the signatories stated that its purpose is '. . . to obtain an equitable distribution among themselves of the total assets which . . . are or may be declared to be available as reparation from Germany'. While, therefore, from the viewpoint of British subjects, war damage compensation can be regarded as adequate and effective under United Kingdom legislation, having already passed through the preliminary stage of registration to that of assessment and finally to payment, the compensation under the peace treaties may depend upon many questions of financial sufficiency, economic stability, and political cordiality of the ex-enemy States. Registration of war losses in those countries has not yet begun under the provisions of the peace treaties, although Trading with the Enemy Department has recorded a great deal of information about the property which is understood to have sustained war damage.

We need now to consider the progress made towards implementation of the resolution in other European signatory States.

The extent of war damage to physical property, and the disorganisation of economic and financial order due to enemy occupation in some European countries, are together responsible for the fact that legislation in those countries has only been able, as yet, to provide for registration of particulars of war damage. Registration of individual claims is essential before an estimate can be made of the loss as a whole, and before detailed consideration can be given to the practicability of any scheme for payment of compensation.

This might appear to be so obvious as not to justify mention, but the writer has heard of many cases in which the British claimants, having registered their losses, assume that compensation will follow as a matter of course; there are no doubt nationals of other nations who also make that assumption, which is completely mistaken. It is true that this registration and compliance with regulations relating to nationality, to evidence of title, and of the value of property concerned, and of the extent of the damage, are all that can be done by the claimant or his agents; it does not follow that compensation will become available. Nor is there

[11] No United Nations national has, however, the same direct claim to reparation for war damage to his property, where it was situated at the time of injury in an Allied State, as he has to compensation for damage to property situated in one of the enemy States with which peace treaties have been concluded.

vested in a British subject any 'right' to compensation as against the Crown in relation to damage to property outside the United Kingdom, or to any particular part of reparation or other money received by the Crown pursuant to any peace treaty. The sovereign is not an agent or trustee for its subjects.[12] (See *note* at end of article, p. 309).

EFFECT OF NATIONALISATION UPON WAR DAMAGE COMPENSATION

The volume of legislation which has been passed in European States since 1945 and which has a bearing upon the ownership of land or buildings is so great, and so rapidly changing, that no apology is needed for saying that any article of this nature could not hope to be accurate both at the date of its preparation and of its publication, but the tendency in Poland, Czechoslovakia, and Yugoslavia, and in other States in Central Europe is towards State ownership of industrial undertakings and agricultural property, and a number of laws having the immediate or ultimate effect of vesting property in the State have been passed.

This article is concerned with war damage compensation and not with compensation for property nationalised or acquired by a foreign State, but from the point of view of the suppliant for compensation for war damage to property abroad, nationalisation measures in the foreign country cannot fail to be detrimental. This is so not only because nationalisation, if accompanied by compensation, absorbs a great part of the money which might otherwise be available for war damage compensation, but also because the principle of nationalisation casts doubt upon the desirability of admitting that the owner ought to have owned the property at all. Where that view of the ownership of land by the State is held, there has been little progress towards payment of war damage compensation for private individuals. It is also of importance to bear in mind that a considerable number of valuable properties situated in Eastern Europe have suffered war damage, and have subsequently been nationalised under the legislation referred to above. In negotiations concerning compensation for nationalisation the claimant may find it difficult to secure any substantial allowance for physical war damage sustained by the property before it was nationalised.

Before attempting to express a general view of the progress towards payment of war damage compensation in Europe it is necessary to emphasise the very limited objectives of the resolution and that:—

[12] *Rustomjee* v. *The Queen* (1876), 2 Q.B.D. 69; *Civilian War Claimants' Association, Ltd.* v. *The King*, [1932] A.C. 14.

(1) The signatory Governments have not undertaken to provide full compensation, or indeed any compensation at all, for their own nationals or those of other signatory States in respect of war damage to property. They have agreed 'in principle', to grant national treatment to nationals of other signatory governments in relation to such compensation benefits for war damage as they do, in fact, administer.

(2) The resolution has no relation to war damage inflicted by Japan in the Far East, and it would be premature to forecast the results of a conference upon reparation from Japan in relation to that war damage. In so far as the principle has been established at the Paris Conference, that Allied Governments ought to extend national treatment to the nationals of other allied States, it is to be hoped that a similar view will be taken when a peace treaty is imposed upon Japan. It may not be found necessary to make such reciprocal action dependent upon the settlement of the terms of such a peace treaty.

(3) The resolution does not provide for, nor does it even refer to any question of compensation for personal injury or disablement due to the war, and it may be remembered that when this question was discussed during the conference at which the Peace Treaties were drafted, it became clear that to provide for monetary compensation for personal injury in the peace treaties, was financially impracticable.

In conclusion, it must be admitted that few British subjects have yet received any adequate compensation for war loss or damage to property in Europe, except under legislation passed in the United Kingdom, and, that progress towards securing compensation has been delayed by the absence of a final peace treaty with Germany, and by the incidence of nationalisation in various forms in foreign States where war damage occurred.

Progress is still being made towards implementation of the resolution, which remains as an example of constructive international co-operation in a Europe which has not recovered from the effects of war upon its economic structure and international financial relations sufficiently to enable the terms of the resolution yet to be fully applied in all the signatory States.

Note

Lawyers who are concerned on behalf of British claimants, may be familiar with the notices published from time to time in the *Board of Trade Journal*, relating to foreign legislation upon war damage, the restoration of property, nationalisation, and other matters affecting the interests of British subjects in property abroad.

Registration in the United Kingdom

The central department concerned with registration of a considerable variety of matters affecting property abroad in which British subjects in the United Kingdom claim an interest, is the Trading with the Enemy Department now at 7 Crosby Square, Bishopsgate, London, E.C.3. The name 'Trading with the Enemy Department' is a somewhat discouraging title and is thought to be misleading, as its present main activities, which are set out in the written reply of the President of the Board of Trade to Mr. Sharp in the House of Commons on April 21, 1947 (*Hansard*, pp. 71 and 72), have little connection with trading with the enemy or the prevention of such trade. Those activities include: '(d) The registration of debts due to the United Kingdom creditors from enemies and former enemies and of property in enemy countries owned by persons in the United Kingdom; . . . and advice to members of the British public regarding the prosecution of their claims for compensation for loss or damage'.

Legislation and registration systems in different countries and the relevant Articles of Peace Treaties

* Denotes a signatory of the resolution

1. Albania.* No registration system and no provision for compensation is believed to have been organised.
2. Austria. Particulars of war damage to or loss of property are accepted for the purpose of a statistical record, but the Austrian Government is understood not to regard itself as a legal successor to the German State, and that it has therefore no obligation to pay compensation for war damage. (Particulars can be registered with Trading with the Enemy Department by British subjects in the United Kingdom.)

   Address for correspondence:—

   Federal Ministry for Property Control and Economic Planning, Ballhausplatz 1, Vienna, Austria.
3. Belgium.* A registration system is in operation and legislation providing for payment of compensation was passed on October 1, 1947, and came into force on November 10, 1947. British subjects may register, but they have not yet been granted national treatment under an Anglo-Belgian agreement.

   Address for correspondence:—

   The local office of the Service des Dommages de Guerre in the district in which the damage occurred.

4. BULGARIA. Under Peace Treaty Article 23.
5. CZECHOSLOVAKIA.* A registration system was established by Decree No. 54 of August 31, 1945, and provision made by Decree No. 82 of September 28, 1945, for payment of advances of compensation in urgent cases. No reciprocal war damage agreement has yet been negotiated whereby British subjects could receive benefits under this legislation which is applicable, at present, only to Czechoslovak citizens.
6. DENMARK.* The existence of an insurance against fire on December 22, 1939, entitles claimants to benefit under the legislation contained in Laws Nos. 367 and 369 of July 20, 1943, No. 390 of August 4, 1943, without discrimination as to nationality. There are thought to be few cases in which property owned in Denmark by British subjects suffered war damage.

   Address for correspondence:—

   Forvaltingsnaevnet For Krigsforsikring Gronningen 25, Copenhagen K.
7. EGYPT.* Law No. 88 of September 8, 1942, formed the basis of Egyptian war damage legislation relating to immovable property, and it provided machinery for application, assessment, and for payment of compensation. Buildings which suffered war damage were valued as at September 1, 1939, if built before January 1, 1942; or at January 1, 1942, if built thereafter. The application of Law No. 88 to property regarded, owing to the nature of its use during the war, as a military objective, is limited, and in some cases excluded, by Article 12.
8. FINLAND. Under Peace Treaty Article 25.
9. FRANCE.* See more detailed discussion earlier in this article, and comments upon the operation of the Anglo-French Agreement of December 3, 1946. Claims must be registered by December 31, 1947.
10. GERMANY. The resolution is a part of the preparation for the settlement of a peace treaty.
11. GREECE.* No provision has yet been made for registration or for payment of war damage compensation in Greek legislation.
12. HUNGARY. Under Peace Treaty Article 26.
13. ITALY. Under Peace Treaty Article 78.
14. LUXEMBOURG.* No war damage legislation has yet been promulgated.

15. The Netherlands.* A registration system and legislation providing for compensation was set up by Intermediate War Damage Act of June 16, 1945, Material War Damage Act, November 9, 1945, and administrative orders thereunder. By Decree of September 3, 1947, the legislation was made applicable to British subjects belonging to the United Kingdom of Great Britain and Northern Ireland.

Address for correspondence:—

Commission for War Damage, Stadhouderslaan 130, The Hague. Claims should be registered not later than February 29, 1948.

16. Norway.* A registration system is in force linked with insurance against fire, under Forordning 4/4 (1941) and Forordning 21/8 (1941), and it is understood that this legislation was made applicable to British subjects resident outside Norway by a decision of October 17, 1945.

Address for correspondence:—

Immovable property: The Head of the Fire Insurance Office of the Municipality where the property is situated.

Movable property: The Insurance Company which insured the property against fire.

17. Poland. Registration is permitted but primarily for the collection of statistics in preparation for a reparation claim against Germany. Foreign nationals may register particulars of their losses or damage to their property only if they were permanent residents in Poland before September 1, 1939. There is no legislation providing for payment of war damage compensation.

18. Roumania. Under Peace Treaty Article 24.

19. Tunisia. By legislation of July 17, 1947 the Anglo-French War Damage Agreement of December 3, 1946 was made applicable in Tunisia. Claims by British subjects should be sent to 'Commissariat à la Reconstruction et au Logement, Tunis', before January 22, 1948.

20. The U.S.S.R.. The U.S.S.R. took no part in the Paris Conference on Reparation, and no legislation has been passed under which British subjects can either record particulars of war damage or under which compensation could be paid to them. The State owns all land in the U.S.S.R., and until the boundaries of States bordering upon it have been determined, it will not be possible, legally, to ascertain the western limits to which the Soviet principle of State ownership of land extends.

21. Yugoslavia.* There is as yet no registration system or legislation upon war damage under which British subjects can register or obtain benefits.

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E.A.S.B.

THE PRESENT LEGAL STATUS OF GERMANY [1]

By F. A. Mann, ll.d. (Lond.)

I

The legal position of Germany, as it has developed since the summer of the year 1945, has so far attracted singularly little attention on the part of jurists. Although it is of a wholly unprecedented character, the only contribution to its clarification which is at present available comes from the pen of Professor Kelsen who, in 1944, published an article showing a remarkable degree of foresight,[2] and in July, 1945, made a brilliant analysis of the situation which had then been created for a month or so.[3]

It is unlikely that the difficulty of competing with Professor Kelsen is the only reason for such silence. There is probably a widespread feeling that the present phase in the evolution of Germany's legal status is a temporary one and therefore not in need of further research.

Such an attitude disregards the fact that, however soon they may be displaced by a permanent arrangement, the conditions which have existed for almost two years are bound to give rise to a host of practical problems. Although the underlying facts may disappear, legal acts performed on their basis may have to be scrutinised in years to come. Thus an arrest made in Germany by an official of Military Government in Germany may lead to an application for a writ of habeas corpus which would involve the question whether Germany or the British Zone of Occupation [4] can be said to be part of the dominions of the Crown.[5] A writ of certiorari directed against a decision of a British Military Government Court in Germany may impose upon a Divisional Court in England the duty of ascertaining whether or no the Military Government Court is a British Court. The effect of naturalisation purporting to confer German nationality and effected by British Military Government in the British Zone

[1] The substance of this paper was read on March 5, 1947, before the Grotius Society. Articles which appeared after that date could not be taken into account; this applies in particular to the article by Mr. R. Y. Jennings in *British Year Book of International Law*, 1946.

[2] 38 (1944), *American Journal of International Law*, 689.

[3] 39 (1945), *American Journal of International Law*, 518.

[4] British Military Government frequently speaks of 'Zone of Control'; see particularly Ordinance No. 4 (*Military Government Gazette, No.* 4, p. 5).

[5] If this cannot be said, the writ cannot issue: *Ex p. Anderson* (1861), 3 E. & E. 487; *Re Ning Yi-Ching* (1939–1940), 56 T.L.R. [illegible]

may have to be tested. The validity of the confiscation of British-owned property by Military Government may become an issue in an English Court. The last-mentioned example is perhaps particularly instructive. If a British official in Hamburg wrongfully confiscates the property of a British subject, and an action is brought against the official in an English Court, it would become necessary to decide whether the defendant acted as the agent of a German State or of the British Crown; in the latter event the defence of act of State would not be available [6]; in the former event the defendant could pray in aid the often enunciated, though perhaps assailable, principle that 'every sovereign State is bound to respect the independence of every other sovereign State and the Courts of one country will not sit in judgment on the acts of the Government of another done within its own territory'.[7]

Considerable practical importance for both international and municipal law, therefore, attaches to the determination of Germany's present legal status; even the established rule according to which in these matters municipal courts are to a large extent guided by statements provided by the Executive, renders it in no way futile to clarify the issues.

II

These issues involve an evaluation of Germany's international and constitutional position. In order to avoid confusion it is necessary at the outset to state certain matters with which this paper is not concerned.

When General Eisenhower led his Allied Expeditionary Force into Germany, he had the double capacity of Supreme Commander of the Allied Forces and of Military Governor.[8] Even now the Commander-in-Chief of the British Zone of Occupation exercises the distinct functions of Commander-in-Chief of the British Army of Occupation and of Military Governor. In so far, however, as the armed forces are concerned, they live under their own law. Their position is governed by the familiar rules of international law applicable to armies stationed in foreign territory.[9] They do not form part of the German administration. They are distinct from Military Government. Consequently they are subject neither to German nor

[6] *Johnstone* v. *Pedlar*, [1921] 2 A.C. 262, and the authorities there referred to.
[7] *Underhill* v. *Hernandez* (1897), 168 U.S. 250; cf. *Princess Paley Olga* v. *Weisz*, [1929] 1 K.B. 718, and numerous other cases discussed in 59 (1943) L.Q.R. 42, 155.
[8] See note 15 below.
[9] Oppenheim (-Lauterpacht), *International Law*, 5th ed., s. 445.

to Military Government law or courts,[10] but exclusively to their own military, naval or air force law which they took with them. Therefore a Military Court in the British Zone of Occupation is a British Military Court; British naval law lays down the conditions under which a British seaman may be arrested, and so forth.

Military Government, on the other hand, is exercised by (Civilian) Military Government Officers. Their position within the framework of German administration will have to be considered in the course of the following observation. If, and to the extent to which, they exercise the functions of Allied administration in Germany, their position is material to this paper. But the internal law under which they are organised and live should be recognised as a separate issue which is in no way dependent upon their external administrative work in Germany. It is submitted that, whatever may be the legal character of administrative functions discharged by a Military Government Officer, *e.g.* of a confiscation of property effected by him, internally Military Government of each of the Allied nations is an organisation which, like the army, lives under its own national law. Thus, the British Military Government Officer who writes a libellous letter about a colleague is subject to English law.[11] And a British Military Government Court which exercises jurisdiction over a British Military Government Officer [12] is, it is suggested, a British Court, though it may have quite a different character when it exercises jurisdiction over a German or a Swiss. A Maritime Court which, during the war, the Dutch Government was allowed to establish in England, was a Dutch Court.[13] If, during the war, the Dutch Government in London had a Dutchman arrested here, his remedy lay in the Dutch Courts and was determined by Dutch law.[14] Similarly, in its internal aspects and relationships the instrumentality of Government set up by the British in Germany is British. No other result would be consistent

[10] Art. II of Ordinance No. 2 gives Military Government Courts jurisdiction 'over all persons in the occupied territory except persons other than civilians who are subject to military, naval or air force laws'. Military Government Courts have no jurisdiction in matters other than criminal cases. It is quite true that under Art. VII (d) Military Government has the power to transfer to the jurisdiction of Military Government Courts any case or class of cases, but this cannot apply to civil cases. (See Art. II of Ordinance No. 2, below.) Except with the consent of Military Government no German court has jurisdiction in cases against any of the United Nations or its nationals: Law No. 2, Art. VI (SHAEF), as amended by British Zone Ordinance No. 29.

[11] See note in 9 (1946) Mod.L.R. 179 on the case of *Szalatny-Stacho* v. *Fink*, [1946] 1 All E.R. 303 (Henn Collins, J.); [1947] K.B. 1 (C.A.).

[12] See Ordinance No. 5, *Military Government Gazette No.* 4, p. 5.

[13] See the Allied Powers (Maritime Courts) Act, 1941, and Viscount Simon, *Journal of Comparative Legislation*, 3rd series, XXIV (1942) 1; 58 (1942) L.Q.R. 41.

[14] *Re Amand* (*No.* 2), [1942] 1 All E.R. 236.

with sound principle, the requirements of justice and the ideas which British civilian officers in Germany expect to be given effect to.

According to Ordinance No. 5, British civilians in Germany are subject to English Criminal Law; they cannot be tried for an offence against German law (which term, in this context, includes Military Government Law) except with the express authority of Military Government; and they cannot be arrested or detained by British police officers in Germany except in cases where British military police had the powers of arrest or detention of a member of the British armed forces under British Military Law. It is suggested that these provisions give expression to a general principle.

III

When the Western Allies entered Germany, General Eisenhower brought with him the fundamental Proclamation No. 1 which reads as follows [15]:

> Supreme legislative, judicial and executive authority and powers within the occupied territory are vested in me as Supreme Commander of the Allied Forces and as Military Governor, and the Military Government is established to exercise these powers under my direction.

This Proclamation, like all other enactments of General Eisenhower, remained in force within the British Zone after the dissolution of SHAEF,[16] but is, in fact, superseded by three documents which were issued in Berlin on June 5, 1945, and contain what must now be regarded as the paramount laws of Germany.[17]

The first is a 'Declaration' made by the Supreme Commands of the four Allies 'acting by authority of their respective Governments and in the interests of the United Nations'. It recites Germany's unconditional surrender, the absence of any central Government and the fact that it is necessary 'without prejudice

[15] *Military Government Gazette*, Germany, 21st Army Group Area of Control, No. 2, p. 1, Art. I of Proclamation No. 1, issued by Field-Marshal Lord Alexander in Italy read as follows: 'All powers of government and jurisdiction in occupied territories and over the inhabitants and final administrative responsibilities are vested in me, General Officer Commanding the Allied Forces and Military Governor, and in the Allied Military Government of occupied territory established to exercise the powers under my direction'. (See *British Year Book of International Law*, 1944, 155.) There is probably little practical difference between these two Proclamations. The question whether and to what extent they are in conformity with the traditional law relating to belligerent occupancy has now only historical interest.

[16] Ordinance No. 4.

[17] Cmd. 6648. The Declaration of Berlin mentioned in the text was amplified by Proclamation No. 2 concerning 'certain additional requirements imposed on Germany' (*Control Council Gazette No.* 1, p. 8). Under clause 48 any doubt as to the interpretation of the Declaration or regulations issued thereunder will be decided by the Allied Representatives.

to any subsequent decisions that may be taken respecting Germany to make provision for the cessation of any further hostilities on the part of the German armed forces, for the maintenance of order in Germany and for the administration of the country, and to announce the immediate requirements with which Germany must comply '. It then proceeds as follows:

> The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any State, municipal or local government or authority. The assumption, for the purpose stated above, of the said authority and power does not effect the annexation of Germany.
>
> The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory.

The second document is a ' Statement ' according to which

> supreme authority in Germany will be exercised, on instructions from their Governments, by the British, United States, Soviet and French Commanders-in-Chief, each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole. The four Commanders-in-Chief will together constitute the Control Council.

The third document is another Statement establishing the four zones of occupation.[18]

The supreme organ of Germany as a whole, therefore, is the Control Council. It consists of the four Commanders-in-Chief as political heads, and its work is being carried on by a quadripartite organisation, *viz.* the permanent Co-ordinating Committee and the

[18] Special provisions have been made for the area of ' Greater Berlin ' which is being occupied by forces of the four Powers. An Inter-Allied Governing Authority, the Allied Kommandatura, has been established ' to direct jointly its administration '. The Allied Kommandatura, therefore, has only administrative but no legislative powers, except in so far as such powers are being delegated to it by the Control Council. The British Sector of Berlin is not included in the British Zone of Occupation (Ordinance No. 4, Art. III) so that British zonal legislation does not apply to it; it would seem to follow, *e.g.*, that Military Government Courts set up in the British Sector are without legal basis. Since the Kommandatura has no original legislative powers, British (and, similarly United States and French) zonal legislation does not apply to Berlin and, Berlin forms part of the Soviet zone, Soviet zonal legislation would appear to apply to Berlin; in practice, however, the administration of such legislation will be impossible without the consent of the Powers occupying the Sectors.

Control Staff comprising thirteen functional Directorates or Divisions (Military, Naval, Air, Transport, Political, Economic, Finance, Reparations, Deliveries and Restitution, Internal Affairs and Communications, Legal, Prisoners of War and Displaced Persons, Manpower) [19] these 'Ministries' have established numerous quadripartite Committees which prepare and assist in the work of the Directorates.

The supreme authority of the Control Council, however, is territorially limited: according to the Statement of Berlin the Commanders-in-Chief exercise 'supreme authority *in* Germany' only. Supreme authority in external matters is reserved to the Allied Governments. It was, therefore, fully consistent when the Agreement with Switzerland concerning the liquidation of German Property in Switzerland (Cmd. 6884) was made by the Allied Governments who 'claimed title to German property in Switzerland by reason of the capitulation of Germany and the exercise of supreme authority in Germany', or when, in the Treaties of Peace with the five satellite countries, provisions are contained which prima facie affect a third party, *i.e.* Germany; thus, it has been agreed that Italian property in Germany should no longer be treated as enemy property and should be restored 'in accordance with measures which will be determined by the Powers in occupation in Germany', that Italy waives most of her and her nationals' claims against Germany and German nationals, and that German assets in Italy are to be transferred in such manner 'as may be determined by those of the Powers occupying Germany which are empowered to dispose of the said assets'.[20]

In so far as enactments of the Control Council have not interfered with his discretion, each Commander-in-Chief as Military Governor is supreme within his zone of occupation. His authority undoubtedly includes legislation, and in the British Zone numerous enactments, called Ordinances, have in fact been issued, though this is to some extent different in the United States Zone where usually German authorities, controlled and guided by the Commander-in-Chief, enact legislation and where, consequently, a different conception has become apparent.[21] But while the Control Council's

[19] Statement of Berlin, clause 3; on the work of the Control Council see Anne Whyte, *Quadrupartite Rule in Berlin*, *International Affairs*, XXIII (1947) 30.

[20] Cmd. 7022. Art. 77 of the Treaty with Italy, Art. 28 of the Treaty with Roumania, Art. 26 of the Treaty with Bulgaria, Art. 30 of the Treaty with Hungary, Art. 28 of the Treaty with Finland.

[21] But see Ordinance No. 41 relating to the Establishment of a Central Legal Office for the British Zone and Ordinance No. 52 relating to the 'Constitution and Functions of the German Economic Administration for the British Zone' which involves a substantial transfer of authority to a German administrative body. As a Special Correspondent of *The Times*, who is known to possess great experience, said (March 4, 1947), 'United States theory is that all power

jurisdiction is unlimited, that of the Commanders-in-Chief is restricted not only *ratione loci*, but also *ratione materiae* : they have no jurisdiction in matters affecting Germany as a whole. Although the Statement of Berlin provides that the Control Council ' will ensure appropriate uniformity of action by the Commanders-in-Chief in their respective zones of occupation ', conflicts are liable to arise. The difficulty results from the ambiguity of the phrase ' matters affecting Germany as a whole ', ' questions intéressant l'ensemble de l'Allemagne '. Does it cover only matters which purport and are intended to affect Germany as a whole, or does it extend to matters the incidental effect of which may be felt in Germany as a whole ? The new Municipal Code, *e.g.*, introduced in the British Zone by Ordinance No. 21, is a measure which, notwithstanding its great significance, is clearly of a strictly local character. But the British-American Agreement for the economic fusion of the United States and United Kingdom Zones [22] is a much more serious matter and has provoked some criticism on account of its far-reaching effects upon the other zones of occupation. If the French Commander-in-Chief introduced in his zone the French Civil Code in substitution for the German Civil Code, this would be an unequivocal example of a matter affecting Germany as a whole, although prima facie it would be territorial legislation. Probably the phrase will have to be given a wide interpretation so as to achieve the obviously desired object of uniformity.[23]

IV

The first question to which the preceding summary of the relevant texts gives rise is whether Germany can be said to be under belligerent occupation within the meaning of Articles 42 to 56 of the Hague Regulations.

Arguing before the Court of Appeal, the Attorney-General, Sir Hartley Shawcross, K.C., said : ' The position is that this country is now in belligerent occupation of Germany, with the Army of Occupation in control '.[24] If this were a considered statement of the strictly legal position and represented the true view, the consequences would be grave, for there cannot be any doubt that the

originates with the people. The bizonal agencies are therefore presumed to derive their authority from the consent of the Laender, acting through the Laenderrat, the free and equal association of the three Laender. British Military Government takes the probably more realistic view that the administrations are based on an agreement between two of the occupying powers and derive their authority clearly and squarely from Military Government '.

22 Cmd. 7001.

23 The validity of zonal legislation does not seem to be a matter which is withdrawn from the jurisdiction of German Courts, and it is likely to become an issue in proceedings outside Germany.

24 *R.* v. *Bottrill, ex p. Kuechenmeister*, [1947] 1 K.B. 41, at p. 45.

Allies have not kept, and have not shown the intention to keep, within the limits of the Hague Regulations. This follows not only from the Declaration of Berlin itself by which the Allied Governments rather than the Commanders-in-Chief assumed supreme authority,[25] but also from many subsequent pronouncements and enactments which cannot be supported by traditional law. In the particular case of Germany, it is true, a belligerent occupant would have had rights which prior to the rise of the fascist State were unthinkable, but which may be brought within the letter and spirit of established law. Thus, it may well be said that the repeal of Nazi legislation is permitted by the Hague Regulations, because this is legislation which an occupant is absolutely prevented from respecting.[26] It can also be contended that numerous measures taken for the purpose of demilitarisation, changing the political system of Germany and controlling the economic resources of a highly centralised totalitarian State are required for the maintenance and safety of the occupying Powers and the consummation of their victory. Many other enactments, though startling at first sight, can be justified by the object of restoring and ensuring public order and safety. But even if an interpretation of the Hague Regulations, which is both broad and adapted to the peculiar circumstances, renders a large part of Allied policy in Germany consistent with traditional law, there remains enough that cannot be fitted into its frame. The Declaration of Berlin, supplemented by Proclamation No. 2, as well as the Potsdam Agreement which, though it constitutes an agreement between the heads of government of three occupying Powers, must be considered as a basic document of German law, provide for matters which admittedly are requisite not for completing the victory over Germany, but for 'future peace and security'[27]; it is difficult to believe that the desired decentralisation of administration in Germany[28] is temporarily necessitated by the interests of military control; to place the City of Koenigsberg and the territories east of the Oder-Neisse line under Soviet and Polish administration respectively[29] far exceeds the limits within which a mere belligerent occupant could act; no belligerent occupant could withdraw diplomatic missions[30] or require 'German authorities and all persons in Germany' to hand over all gold, silver and platinum,[31] or acquire the right to have placed 'at the unrestricted disposal of

25 The phrase 'supreme authority' in itself would be inconclusive.
26 Art. 43.
27 Declaration of Berlin, Art. 13.
28 Potsdam Agreement, III, 9.
29 *Ibidem*, VI and IX.
30 Proclamation No. 2, 7 (c).
31 *Ibidem*, clause 15.

the Allied Representatives' the entire German shipping and the whole of the German inland transport system.[32] And if one looks at the legislation of the Control Council, one finds Law No. 4 about the reorganisation of the German judicial system, or Law No. 16 the marriage law, Law No. 36 about administrative courts or Law No. 38 amending section 204 of the German Code of Civil Procedure, and Law No. 46 about the dissolution of Prussia, all of which contain provisions in no way required for ensuring public order and safety. The establishment of new Laender with new Constitutions in the British and American Zones are prominent examples of zonal legislation which point in the same direction.

The Allies' failure to exercise the qualified rights of a belligerent occupant seems to be undeniable. As such it is not really relevant. For to say that, because there is a breach of the law, the law cannot apply, is not an admissible argument. The material question is why the Allies have an internationally recognisable right to behave otherwise than as belligerent occupants.

It would be unsatisfactory to make the answer dependent upon the existence or non-existence of a state of war. Some publicists would probably be inclined to say that, if the war has ended, Germany cannot, and that, if the war continues, she must needs be under belligerent occupation.[33] The latter proposition would involve a *petitio principii*; the former would overlook the fact that the rules relating to military occupation of enemy territory are minimum rules which extend to 'peaceful occupation' by virtue of an armistice or a treaty of peace.[34] Neither unconditional surrender in itself,[35] nor the mere absence of a central government, would prevent those rules from coming into operation—it would obviously lead to questionable results, if by eliminating the occupied country's government, a belligerent could enlarge his powers.[36] Finally, to invoke the conception of reprisals would discredit rather than promote the cause of international law.

Although neither the end of hostilities nor the unconditional surrender nor the disappearance of a central government could, in themselves, have entitled the Allied Governments to adopt an attitude other than that of a belligerent occupant, it is, in the peculiar

[32] *Ibidem*, clauses 28 and 29.

[33] Cf. 'E', *British Year Book of International Law*, 1938, 236; Sir Arnold McNair, *Legal Effects of War* (2nd ed.), pp. 342, 343.

[34] Oppenheim-Lauterpacht, *International Law*, II (6th ed., revised), p. 338, note 6, and p. 339, note 2; Feilchenfeld, *The International Economic Law of Belligerent Occupation* (1942), pp. 6, 108 *sqq.*

[35] Feilchenfeld, *l.c. passim.*

[36] The decision of Clauson, J., in *Bank of Ethiopia* v. *National Bank of Egypt*, [1937] Ch. 513, may be said to indicate a different view, but has singularly failed to arouse the approval of international lawyers and is indeed open to grave criticism. See Sir Arnold McNair, note 33 above.

situation of Germany in 1945, the co-existence of these three facts which provides an internationally recognisable justification for Allied action. The rules relating to belligerent occupation seek to establish a compromise between military necessities and the interests of the inhabitants. They presuppose an interplay between military and civilian authority. They assume the precariousness of the occupant's position which demands such protection as the legitimate needs of the civilian population permit. They are pervaded by the idea that the inhabitants are non-combatants with whose mode of life a belligerent should, and can afford to, interfere as little as possible. They are far removed from the atmosphere of a totalitarian State which forces children no less than the aged into its service. They expect, from both sides, a standard of conduct which becomes impracticable when every single activity of the occupied State expresses a doctrine the eradication of which is the very aim of the war. The unconditional surrender which the Allies had demanded for years had been preceded by the unconditional surrender of all nations allied with Germany except remote Japan, herself on the verge of surrender. It meant that the Allies were free to take all measures necessary to carry out their object. No German Government could have been formed to co-operate with a mere belligerent occupant. If the Allies had assumed only the role of belligerent occupants, they and the United Nations in whose interests they act, could not achieve their war aims, which go far beyond military victory; indeed, they would have failed to fulfil their duty and historic mission. It is the unique character of the circumstances which required and sanctioned a unique solution, a new departure.[37] It is submitted that it is more satisfactory and also in harmony with the spirit of international law as a living law to recognise the existence of a new experiment rather than so to stretch the words of the Hague Regulations that they sanction Allied practice in Germany.

V

Even if the Allies are not merely belligerent occupants, it cannot possibly be contended that any of the four zones of occupation is in any sense a dominion of the occupying Power, that the United Kingdom exercises jurisdiction in the British Zone, that the Commander-in-Chief as Military Governor of the British Zone is a representative of the British Government acting on its behalf, that

[37] Kelsen, 39 (1945) *American Journal of International Law* 518, arrives at the same conclusion and bases it on the absence of a central government and on his theory that Germany is no longer a State and that the war has ended. On the observations in the text see Friedmann, 3 (1940–1941) Mod.L.R. 177; *Grotius Transactions*, 1940, 211, and in other publications.

he or any officer or authority acting under his direction perform acts for which the United Kingdom bears legal, as opposed to political or parliamentary, responsibility. The true position is that the Commander-in-Chief as Military Governor of his Zone is the Delegate of the four Governments; it is by their authority that he exercises zonal jurisdiction the nature of which will have to be considered below.[38]

The four Governments have assumed 'supreme authority with respect to Germany'. This is the overriding pronouncement of the Declaration of Berlin. It follows that no single Government can claim supreme authority with respect to Germany or any part thereof. Such authority as the Commander-in-Chief of any Zone has is derived not from the Declaration of Berlin, but from the Statement of Berlin which deals with the *exercise* of the supreme authority *assumed* by the four Governments under the Declaration of Berlin. Such authority is being exercised jointly by the four Commanders-in-Chief constituting the Control Council in matters affecting Germany as a whole, and by each of them in his zone of occupation. Although the separation of supreme authority and its exercise cannot be regarded as a new development,[39] the four Governments, having assumed supreme authority with respect to Germany as a whole, would normally exercise it themselves. If they allow the Commanders-in-Chief to exercise it in their respective zones, this involves delegation and, in law, renders the delegate a representative of the delegant, *i.e.* the four Governments jointly rather than his own Government. None of the four Powers as such is invested with supreme authority or any divisible part of it. Each of them could have acquired or exercised it only, if, instead of appointing the Commanders-in-Chief, the Statement of Berlin had so provided. Consequently none of the four Governments could confer supreme authority in its zone to an official other than the Commander-in-Chief for the time being.

This conclusion could be nullified only by attributing wider significance than they merit to those words of the Statement according to which the Commanders-in-Chief exercise their authority 'on instructions from their Governments'. In fact, it could be nullified only by assuming that, having jointly assumed supreme authority, the four Governments have divided it zonally not only for the purpose of its exercise, but also for the purpose of divesting themselves of it and allocating to each of them what belongs to them jointly. It is submitted that there is no warrant for

[38] See p. 331.

[39] See, generally, Lauterpacht, *Private Law Sources and Analogies of International Law*, p. 189.

such a view, and that the subjection of the Commander-in-Chief to his Government's instructions is, in law, immaterial to his legal position. The High Commissioner of Palestine is subject to instructions from the British Government. But whatever the true view of the legal status of Palestine [40] may be, it cannot be suggested that the mere power of giving instructions makes Great Britain the Sovereign of Palestine or renders Palestine a part of Great Britain or establishes British jurisdiction in Palestine. The power of giving instructions is not irreconcilable with sovereignty over Palestine being vested in others than the mandatory Power. There is no reason in law why the power of giving instructions in the exercise of supreme authority should not be differentiated from the holding of such authority.

VI

The next question is whether Germany as a whole now so ' belongs ' to the four occupant States as to necessitate the inference that they have placed her under their joint sovereignty and established a condominium, a new State the creation of which would entail many intricate problems of State succession.[41]

According to traditional doctrine it would be impossible to give an affirmative answer. The acquisition of territorial sovereignty could be achieved only by one of the five well-defined methods [42] of which subjugation alone would demand consideration. Subjugation would require conquest and annexation. Since the Declaration of Berlin expressly states that ' the assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany ', subjugation would clearly have to be negatived.

Yet it is Professor Kelsen's thesis that the four Allies hold Germany under their joint sovereignty. In his view, subjugation is possible without annexation, which is normally understood as presupposing the conqueror's intention to hold the territory permanently for himself, to acquire both the legal and the beneficial title to the country:

> The establishment of territorial sovereignty does not depend on the new sovereign's intention to hold the territory for good. He may have the intention to cede the territory or part of it later on to another State. Such an intention does not prevent

[40] See Oppenheim-Lauterpacht, *International Law*, 5th ed., I, pp. 191, 197 *seq.*

[41] Kelsen, *l.c.*, p. 522, makes a gallant attempt at dealing with the problem of German nationality. But he does not mention the nationality of those Germans who at the material times were outside Germany and who, therefore, could not be said to have acquired the new German nationality which is implicit in Kelsen's remarks, but would be stateless (see 5 (1942) Mod.L.R. 218). Nor does Kelsen deal with any of the other problems of State succession.

[42] Oppenheim-Lauterpacht, 5th ed., I, s. 211.

> the acquisition of sovereignty. . . . If there is a difference at all between formal annexation and placing the territory under the conqueror's sovereignty without the latter's intention to hold it permanently, it is rather a political than a legal one. The rights and duties of the territorial sovereign are the same in both cases.[43]

It must be admitted that there is no *a priori* reason why the categories of methods of acquiring territorial sovereignty should be considered as closed. International law is not so rigid as to exclude new developments. It may well be, therefore that there exists a sixth method of acquiring territorial sovereignty, *viz.* conquest, and an intention to vest only the legal title to the territory in the conqueror who would hold it temporarily, pending further disposition, until he decides to hold it for himself or to retransfer or cede it so that the beneficial title would be in suspense.

A theory on these lines seems to be at the back of Professor Kelsen's mind,[44] but even if it is considered as a possible one, it could not actually apply to the case of Germany. Professor Kelsen is a little dogmatic on this point, and does not attach sufficient weight to the fact that in the last resort the problem must depend on the four Governments' intention as expressed in or to be inferred from the Declaration of Berlin. It is submitted that the text does not support the existence of an intention to acquire sovereignty.

Firstly, one would expect so important a result to have been unequivocally expressed, *e.g.* by the words that the four Powers assume 'all rights and *title*' over Germany.[45] The suppression of such a statement, even if primarily due to political reasons, cannot be without legal significance.

Secondly, it should be remembered that the first document by which the Big Three gave particulars of their intentions with regard to Germany, *i.e.* the Communiqué issued after the Crimean Conference in February, 1945, contained no hint of such an intention. It declared that it was the Allies' 'inflexible purpose' to destroy German militarism and Nazism, but not to 'destroy the people of Germany', that under agreed plans the forces of three Allies [46] would each occupy a separate zone of Germany, and that these plans provided for 'co-ordinated administration and control'. This indicates something less than the acquisition of territorial sovereignty.

Thirdly, it should be noted that by the Declaration of Berlin supreme authority was assumed by the *Governments* of the four

[43] *L.c.*, p. 521.
[44] His formulation is not too precise, but the reference to the legal position of Cuba after the Spanish-American war makes his views clear.
[45] See Art. 99 of the Treaty of Versailles.
[46] The French Government did not participate in the Conference.

nations, neither by the heads of the Allied States nor by the Allied States as such. In so far as the United Kingdom is concerned this wording is a little remarkable, though, in itself, it is certainly inconclusive. If the United Kingdom had desired to assume joint sovereignty over Germany, it would have been the better and perhaps more usual method for the Government of the United Kingdom to act expressly on behalf of the King as the nation's representative in the conduct of foreign affairs. Perhaps it is possible to find in this language an indication of the intention to assume supreme authority, not for the purpose of acquiring State sovereignty, but for the purpose of establishing governmental control.

Fourthly, by the Declaration of Berlin supreme authority was assumed only for three specified purposes, *viz.* ' to make provision for the cessation of any further hostilities on the part of the German armed forces, for the maintence of order in Germany, and for the administration of the country, and to announce the immediate requirements with which Germany must comply '. This was ' without prejudice to any subsequent decisions that may be taken respecting Germany ' and, moreover, in another passage, the four Governments state that they ' will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory '. These reservations underline the limited and provisional character of Allied intentions, and indicate that, in connection with future decisions, territorial sovereignty may be acquired. If the Allies had already acquired it, those reservations would be superfluous.

Fifthly, the assumption of territorial sovereignty by the Allies would be so retrograde a development that very strong evidence would be required to support it. It is an accepted maxim of international law that belligerent occupancy does not confer or justify the assumption of territorial sovereignty. Even though the Allies are not merely belligerent occupants, they cannot be presumed to revert to a practice which more than a century ago was condemned by international law and discarded in practice.

In Austria, it is true, by virtue of an Inter-Allied Agreement of July 4, 1945, which was in force until June 28, 1946 (Cmd. 6958), an Allied Commission was in operation to *exercise* supreme authority; while its organisation was and, for its limited purposes, still is very similar to the German organisation, the Allies never *assumed* supreme authority in Austria. But it would not be permissible to put forward an *argumentum ex contrario* to the effect that the supreme authority assumed with respect to Germany must mean more than that governmental authority which in Austria was conferred by much less solemn words. The Declaration of Berlin

envisages a long-term arrangement, while the Austrian Agreement intended to set up machinery ' which will operate until the establishment of a freely elected Austrian Government recognised by the Four Powers ', and was therefore of a strictly temporary character. This difference justifies and explains the difference of formulation.

VII

If the four Governments have not acquired sovereignty either in their respective zones of occupation or over Germany as a whole, the question arises whether Germany is still a State. On this point it is necessary to make a distinction.

Germany certainly is not a sovereign State in the accepted sense of the law of nations.[47] It is an essential element of the conception of a sovereign State that the country is under the control of its own independent Government. Germany has no Government which is her own, or which is free from control over its internal administration or its foreign relations; even if it were possible to describe the Allied Control Council as a German Government, it would be subject to instructions given by the four Allied Governments.

Moreover, Germany maintains no relations with the world at large. According to the Statement of Berlin, it is true, ' liaison with the other United Nations Governments chiefly interested will be established through the appointment by such Governments of military missions (which may include civilian members) to the Control Council '.[48] This representation is so limited and one-sided that it is impossible to say that Germany maintains normal foreign relations, particularly since it has also been provided[49] that ' the Allied Representatives will regulate all matters affecting Germany's relations with other countries ', ' will give directions concerning the abrogation, bringing into force, revival or application of any treaty, convention or other international agreement, or any part or provision thereof, to which Germany is or has been a party ', and ' may require the withdrawal from Germany ' of neutral missions. German diplomatic missions have been recalled,[50] and it has been expressly declared that ' in virtue of the unconditional surrender of Germany, and as of the date of such surrender, the diplomatic, consular,

[47] Kelsen, *l.c.*, p. 519, says that Germany is not a State. He does not draw the distinction made in the text, but obviously speaks only of statehood in international law, and, generally, is no doubt influenced to a large extent by his own theory of the State and of sovereignty.

[48] Paragraph 5.

[49] Proclamation No. 2, clauses 5–7. There is no authority for the view that treaties made by a sovereign State automatically lapse, if such State suffers ' une extinction partielle ' and becomes a dependent State.

[50] *Ibidem.*

commercial and other relations of the German State with other States have ceased to exist '.

Pace Professor Kelson who would not accept the distinction,[51] it is submitted, however, that though she is not a State within the meaning of international law, Germany still is a State in the general sense of the term. In this connection it is unnecessary to embark upon a discussion which would lead into the depths of jurisprudence. It will be generally agreed that there exists a State, if a body of people, inhabiting a defined territory, is so organised under supreme civil rule and government as to constitute a coherent body politic.[52] These conditions are fulfilled in the case of Germany, provided the Allied Control Council can fairly be regarded as the Government of Germany.

Although the Control Council is not a German Government, it does constitute the Government of Germany, because it is vested with supreme authority in matters affecting Germany as a whole. This governmental authority of the Control Council, it is true, is limited to internal German affairs and is derived from the four Allied Governments which assumed supreme authority and then delegated[53] its exercise in Germany. But this only means that, admittedly and professedly, the Control Council is not a German Government. It is not the root of title, but the actual governmental function and authority that is decisive. Nor can any counter-argument be deduced from that passage of the Declaration of Berlin according to which the Allied Governments will hereafter determine ' the status (statut) of Germany or any area at present being part of German territory '. Whatever the liguistic connection

[51] See note 47 and his writing on the State, Sovereignty, etc.

[52] In this connection the use of the word ' sovereign ' should be avoided. The German State, if it exists, has of course internal sovereignty. This has no bearing upon the existence or non-existence of external sovereignty which is clearly missing, and without which Germany cannot be a sovereign State in the sense of international law. Kelsen's thesis (*l.c.*, p. 521) that ' Germany certainly has ceased to exist as a sovereign State and since the territory is not under Germany's own sovereignty, it would be no State's if it were not under the sovereignty of the occupant Powers ' is untenable and can only be explained by the fact that he has become a victim of the dangers attending the word ' sovereignty '.

[53] This does not preclude the four Allied Governments from exercising supreme authority themselves, if they wish so to do. An example of such exercise of supreme authority is provided by the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis which was made on August 8, 1945, by the Governments of the United States of America, France, the United Kingdom and the U.S.S.R., ' acting in the interests of all the United Nations ' and to which the Charter of the International Military Tribunal is annexed (*American Journal of International Law* (*Official Documents*), 1945, 257). The Nurnberg Tribunal quite correctly said in its judgment: ' The making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich had unconditionally surrendered; and the undoubted right of these countries to legislate for the occupied territories had been recognised by the civilised world '.

between the word 'State' and the word 'status' may be,[54] the argument that because the determination of Germany's status is reserved she cannot at present be regarded as a State, would be too far-fetched to be attractive.

If the above submissions are accepted, it becomes possible to define the present status of Germany a little more precisely.

From the point of view of international law Germany is a dependent State. The circumstances are so unique, however, that any attempt at further classification is bound to fail. The position of the Allied Governments probably is that they exercise what certain publicists have described as co-imperium.[55] While in the case of a condominium a community of States has sovereignty over a territory belonging to them jointly, a co-imperium exists, if several States jointly exercise jurisdiction or governmental functions and powers in territory belonging to another State; the administration by Austria-Hungary of Bosnia and Herzegovina from 1878 to 1908, while the territory belonged to Turkey, is usually given as an example of such co-imperium.

The German State is not a new State.[56] It is the same State as that which existed immediately prior to the Declaration of Berlin. Its identity was preserved, though its status was impaired and reduced and it suffered what Fauchille would describe as an 'extinction partielle'.[57] Nor does it matter that a new Government has taken power. A change of Government, however revolutionary its origin may be, does not involve the formation of a new State.[58]

From the point of view of municipal law the Control Council performs and, indeed, intends to perform the functions of a German Government. It enacts German legislation. The acts of its executive officers are acts of the German State. Thus, by Law No. 5,[59] the German External Property Commission was established 'as an inter-governmental agency of the Control Council'; the law vests

[54] See, *e.g.*, the summary given by Dowdall, 39 (1923) L.Q.R. 98.

[55] Verdross, *Voelkerrecht*, pp. 128, 132; *Hague Recueil* 30 (1929), 275 *sqq.*, 396. Usually the term 'condominium' is used indiscriminately, but the distinction explained in the text seems logical and attractive. Cf. Art. 81 of the United Nations Charter according to which the administering authority exercising trusteeship 'may be one or more States'. 'Co-imperium' as opposed to 'condominium' is a type of fiduciary administration as explained by the Supreme Court of the U.S. in the decisions relating to the Status of Cuba in the treaty of 1898; see 108 U.S. 109, 120. Such fiduciary administration by England occurred, *e.g.*, in the case of Cyprus which from 1878 to 1914 was 'assigned to England in order to be occupied and administered'. The term seems to be an appropriate description of the present German situation.

[56] Cf. Oppenheim-Lauterpacht, *International Law*, 5th ed., I, p. 145, note 1.

[57] *Traité de droit international public*, I, pp. 373, 382 *sqq.*

[58] *The Government of Spain* v. *Chancery Lane Deposit Co., Ltd.*; *The State of Spain* v. *The Same*, *British Year Book of International Law*, 1944, 195, 196.

[59] *Gazette No.* 2, p. 27, and see the amendment of Art. III by Regulation No. 1 in *Gazette No.* 8, p. 160.

in the Commission 'all rights, titles and interests in respect of any property outside Germany' of certain categories of persons Arts. II and III), and confers powers upon it for the purpose of obtaining control over the property (Art. VII). Or by Law No. 9, the property and assets of I. G. Farbenindustrie have been vested in the Control Council and a Committee has been set up to deal with this property. If the External Property Commission exceeds its powers (*e.g.* by misinterpreting the terms 'rights, titles and interests') or if a creditor of I. G. Farbenindustrie claims against the Control Council,[60] the liability of individual members or of the German State is determined by the general German law.[61] And if the Control Council should engage in international trade, it would be the 'German Government' within the meaning of Art. 281 of the Treaty of Versailles and could not claim immunity where this Article is in force.[62]

Further, the Commander-in-Chief in his zone and his zonal authorities and officials are likewise representatives of the Government of Germany. The Commander-in-Chief is not the representative of the occupying State which has appointed him (see above, paragraph V). Nor is he a delegate of the Control Council, because in his zone he does not exercise the (delegated) authority of the Control Council, which is a distinct body exercising authority only in matters affecting Germany as a whole. The Commander-in-Chief, according to the Statement of Berlin, is entrusted with 'supreme authority in Germany . . . in his own zone of occupation'. This formulation is not, as one might think at first sight, contradictory or illogical. It clearly expresses the idea that locally the Commander-in-Chief is the supreme authority in Germany, the supreme representative of the German State, the Government of Germany. If he engages in international trade, Art. 281 of the Treaty of Versailles would apply to him.

The position of the German authorities can only be described in general terms. Broadly speaking, they are organs of the German State. The judgment of a German Court whose judges have sworn 'to obey the laws of Germany',[63] is a German judgment. The

[60] See section 419 of the German Civil Code.

[61] Under SHAEF Law No. 2, as amended (above note 10), no German Court can, without the consent of Military Government, deal with cases involving money claims 'against the German Government or any legal entity existing under public law'. Actions against the Control Council or the German State would be covered by this provision.

[62] Immunity from local jurisdiction may be enjoyed by States which are not sovereign: cf., *e.g.*, *Sullivan* v. *State of Sao Paolo*, Annual Digest, 1941–1942, No. 50 (C.C.A., 2nd), on the one hand and *The Superintendent, Government Soap Factory* v. *Commissioner of Income Tax*, *ibidem*, No. 10 (Supreme Court of Ceylon), on the other hand.

[63] This is so where SHAEF Law No. 2 (Art. V) applies.

naturalisation granted by a competent German authority is a valid German naturalisation. Yet it cannot be overlooked that as a result of the division of Germany into four zones, not everything done in Germany is being done by the authority of German law. There exists German law in so far as it comprises law enacted prior to June, 1945, and Control Council legislation. Zonal legislation, whether enacted by Military Government or German authorities, is not German law, but local law. This is of importance for many questions of private international law which may arise outside Germany, and has led to many difficulties inside Germany. The tax liability of an undertaking carrying on business in more than one zone; the effect of the dissolution of companies or the confiscation of property in a particular zone upon property situated in other zones; the treatment of criminals who have committed an offence under the law of one zone and are being apprehended in another zone—these are some of the problems with which German practice is being faced.

By and large the views propounded above seem to be in harmony with the attitude adopted by the Foreign Office in *R.* v. *Bottrill, ex p. Kuechenmeister.*[64] A German national who was being detained here in pursuance of an order made under the Royal Prerogative, applied for a writ of habeas corpus; before the Divisional Court his principal contention was that by virtue of the Declaration of Berlin Germany had ceased to be a State so that, being outside Germany at the relevant date, he became Stateless and could, therefore, not be interned as an enemy alien. The Court felt bound [65] by a certificate of the Secretary of State for Foreign Affairs which said, after referring to the Declaration of Berlin, that

> in consequence of this declaration Germany still exists as a State and German nationality as a nationality, but the Allied Control Commission (sic) are the agency through which the Government of Germany is carried on.

For the purpose of the proceedings it was unnecessary to certify whether Germany still is a sovereign State in the sense of international law. But the Secretary of State did certify that Germany was a State and that the Control Council was its Government.[66]

[64] *International Law Quarterly*, Vol. 1, p. 243, and [1946] 1 All E.R. 635. See also Sir Hartley Shawcross, K.C., M.P., *Hansard*, 1947, 1044.

[65] In *The Arantzazu Mendi*, [1939] A.C. 256, 258, the Secretary of State said in his certificate: 'The question whether the Nationalist Government is to be regarded as that of a foreign sovereign state appears to be a question of law to be answered in the light of the preceding statements and having regard to the particular issue or circumstances with respect to which the question is raised'. Whether a country is a sovereign State or merely a State cannot make any difference in this connection and it is therefore not certain whether in *Kuechenmeister's Case* the Court was really bound by the certificate on a question of law; see generally *Transactions of the Grotius Society*, 29 (1944) 143.

[66] In the same sense an Opinion of the Supreme Finance Court at Munich mentioned by G. A. Zinn, the Minister of Justice of Greater Hesse in his paper,

VIII

There remains the question whether a state of war continues to exist between this country and Germany. This is a problem the gravity of which will be obvious to every international lawyer. As we realised during the time when 'non-belligerency' was fashionable, there is no halfway house between war and peace. Whichever decision is made, the dilemma is undeniable: If a state of war exists, the rights and duties of neutrals are in force. If there is peace, the belligerents' jurisdiction in prize has come to an end.

In *R.* v. *Bottrill, ex p. Kuechenmeister*,[67] the Secretary of State's certificate said that

> no treaty of peace or declaration of the Allied Powers having been made terminating the state of war with Germany, His Majesty is still in a state of war with Germany.

It is not known whether the war of which the certificate speaks is the war in the international sense or in the sense of municipal law. Before the Court of Appeal it was argued that, even if the applicant was still a German, he was not an enemy, because the war had ended, and that, therefore, he could not be detained under the Royal Prerogative. The Court held in effect that it was concerned

'Das Staatsrechtliche Problem Deutschlands' (*Sueddeutsche Juristen Zeitung*, II, 1947, 4). In the course of the discussion following this lecture, Dr. Paul Abel and Dr. G. Weis were good enough to draw the author's attention to two interesting decisions of the Austrian Supreme Court and the Court of Appeal in Zurich respectively. In the former case, which related to a question of jurisdiction in a matrimonial cause, it was held without extensive discussion that the German State and, consequently, German nationality, continued to exist: January 24, 1946, *Juristische Blaetter* 68 (1946), 142; see also January 28, 1946, *ibidem*, p. 100. The latter decision gave an affirmative answer to the question whether the Hague Conventions, exempting a German plaintiff from the duty of providing security for costs, were still in force as between Germany and Switzerland: December 1, 1945, *Schweizerische Juristenzeitung*, 1946, 89, also *Deutsche Rechts-Zeitschrift*, 1947, 31. The elaborate decision merits a short summary. The President of Switzerland had supplied the Court with a certificate to the effect that Germany was still a State and that Switzerland had not denounced the applicability of the Hague Conventions in the case of Germany. In the course of an independent investigation the Court found that Germany had not been annexed, because the Allies had not expressed an intention of annexation. Consequently, the Court said, 'the present situation can only be that of belligerent occupation'. But can it be said that Germany 'has lost her Government and, therefore, her character as a State, *i.e.*, a subject of international law'? The Court argues that a change of the régime does not involve the abolition of the State and concludes that 'the occupying powers exercise the authority of the German State by virtue of public international law. . . . In international law this is a novelty. But international law requires development. . . . The present situation in Germany corresponds most closely to a kind of fiduciary administration of the authority of the German State by the occupying powers'. It is doubtful whether the point before the Court could not have been dealt with on a simpler ground: see note 49 above. See also District Court at Hamburg, March 18, 1947, *Monatsschrift fuer Deutsches Recht*, 1947, 39.

[67] *International Law Quarterly*, Vol. 1, p. 243; [1946] 1 All E.R. 635 (Divisional Court); [1947] 1 K.B. 41 (C.A.).

only with municipal law and that in municipal law a state of war unquestionably existed.[68]

Does it exist in international law? Professor Kelsen suggests[69] that 'Germany having ceased to exist as a State, the status of war has been terminated, because such a status can exist only between belligerent States'. It is difficult to say what is meant by 'belligerent States' in this context. Probably it is suggested that Germany is no longer a sovereign State, and that for this reason she has no capacity of waging war. But the doctrine that full sovereign States alone possess the legal qualification to become belligerents is too rigid. It is well known that belligerency does not necessarily presuppose sovereignty,[70] and even if only full sovereign States could *become* belligents, it would not follow that States which cease to enjoy full sovereignty *cease* to be belligerents.

In the absence of a treaty or declaration of peace or of subjugation there is only one type of termination of war which has to be considered, *viz.* simple cessation of hostilities,[71] a situation when belligerents drift into a state of peace. This can occur only on rare occasions, because the differences between war and peace are too great to allow an informal change at an undefinable moment.[72] Very strong evidence will have to be available before the termination of war in such a way can be affirmed.

In the case of Germany there is an outstanding fact which makes it difficult to think that the war is continuing. The Government of Germany is composed of the British, United States, Soviet and French Commanders-in-Chief. Can the United Kingdom really be at war with a State whose Government included Field Marshal Lord Montgomery and Sir Sholto Douglas, Marshal of the Royal Air Force, and supreme authority over whom has been assumed by this country jointly with its principal Allies?

IX

The following are the principal conclusions which are submitted:

1. Germany is not at present under belligerent occupation in the legal sense of the term.

[68] The case of *Kotzias* v. *Tyser*, [1920] 2 K.B. 69, relates to 'war' in the sense of municipal law. The same applies to Lord Macnaghten's dictum in *Janson* v. *Driefontein Consolidated Mines, Ltd.*, [1902] A.C. 484, 497, that the law 'knows nothing of an intermediate state which is neither the one nor the other, neither peace nor war'.

[69] *L.c.*, p. 519.

[70] Oppenheim (-Lauterpacht), 6th ed., revised, Vol. 2, sections 56, 74 *sqq.*; Wheaton (-Keith), *International Law*, 7th ed. (1944), II, 99.

[71] See, generally, Tansill, 38 (1922) L.Q.R. 26.

[72] See, in particular, Hyde, *International Law*, 2nd ed. (1945), III, 2385 *sqq.*

2. The four Powers have not assumed territorial sovereignty over Germany as a whole or their respective zones of occupation.

3. The four Governments have jointly assumed governmental sovereignty 'with respect to Germany'. They have reserved to themselves supreme authority over Germany's external affairs, but have delegated the exercise of 'supreme authority in Germany' to the four Commanders-in-Chief.

4. Although each of the Commanders-in-Chief is the delegate of the four Governments because he exercises their authority rather than that of his own Government, he is subject not to their control, but to the instructions of his own Government. Nor is he subject to the Control Council, whose authority extends only to matters affecting Germany as a whole.

5. Germany has ceased to be an independent sovereign State in the sense of international law, but continues to be a State.

6. The Government of Germany consists of the Control Council in matters affecting Germany as a whole, and of the four Commanders-in-Chief in their respective zones of occupation. It exercises authority 'in Germany' only.

7. Since the British Commander-in-Chief represents in his zone the Government of Germany, British administration in the British Zone of Occupation, though subject to the instructions of the British Government and, internally, to English law, constitutes a co-ordinated part of the Government of Germany.

8. The state of war (in the sense of international law) between this country and Germany (probably) came to an end on June 5, 1945.

EDITORIAL NOTES

THE GROTIUS SOCIETY

INTERNATIONAL LAW CONFERENCE, 1947

The 1947 International Law Conference of the Grotius Society was held at The Old Hall, Lincoln's Inn, on Saturday, July 12.[1]

The business of the first session was introduced by a paper on '*The Influence of International Law on International Conduct*', by Professor G. W. Keeton (London). The underlying assumption of the orthodox system of international law, said Professor Keeton, was the proposition that sovereign States—from self-interest, if for no other reason—would normally give their voluntary allegiance to a number of rules of international conduct, the substance of which had won general acceptance. It was further assumed, that as States continued to act in obedience to these rules and as education was developing the more civilised instincts in men, infractions of the rules (and resort to war in defiance of them) would become progressively fewer, indeed, even where resort to war was inevitable, the conduct of warfare would become more and more humane. Again, the rules themselves would gradually be given greater definiteness through the proceedings of international conferences which might eventually accept a code of international law.

These propositions were fundamentally the product of a liberal civilisation; they received severe shocks from the growing forces of nationalism, popular sovereignty and social change. The French Revolution ushered in a period which witnessed, with increasing frequency, the repudiation of international obligations by even the leading Powers. The unilateral denunciation by Russia in 1870 of the Black Sea Clauses of the Treaty of Paris, 1856; and in 1908, the annexation of Bosnia and Herzegovina by Austria-Hungary, in defiance of the Treaty of Berlin, 1878, were striking cases in point.

Out of these violations of international law there had grown, progressively, a habit of thought which held that rules could never derive their binding force from their mere existence and that the vital criterion of the nature of international law was not the contents and status of its rules, but their enforceability. In other words, *sanction* was the root problem; and sanction implied the existence of a super-State authority to impose it. Accordingly,

[1] The full Proceedings of the Conference will be published in Part 1 of Vol. 33 of the *Transactions of the Grotius Society*.

what was in a process of evolution in our days was not only the rules of international law, but the whole structure of international society. We were moving towards a more closely integrated world and we had already witnessed two attempts to provide it with a written constitution; coincidentally, changed social and economic conditions and modern methods of warfare had greatly modified the sovereignties of all States, with the possible exception of two. Unfortunately however, the path of the future was by no means clear. If a situation existed in which one State possessed overwhelming power, one could predict with moderate certainty that a system of inter-State law with compulsive force was in process of evolution. In such a case the force behind the law would be supplied by the predominant State; but we would still have contrasting social philosophies and contrasting views on the structure of international society. That was our root problem and until it was resolved (concluded Professor Keeton), we must expect the present transitional phase of international society to continue.

The first speaker in the discussion on Professor Keeton's paper was Professor Norman MacKenzie, President of the University of British Columbia. In his view, the effectiveness of international law depended upon three assumptions: *firstly*, the existence of a sense of community and of interests in common among the nations; *secondly*, the development of an organised society of nations with appropriate institutions and agencies; and *thirdly*, the formulation of an adequate system of law and of the procedural arrangements necessary for its functioning. All these already existed in some measure; but that measure was not a satisfactory one and, in particular, conditions justifying the first assumption were still sadly lacking. Nonetheless (said Professor Mackenzie) we were witnessing a growing sense of the oneness of the world and of the necessity for some system of law and order in it. A very interesting discussion followed on Professor Keeton's paper.

The second session of the Conference was concerned with '*Expropriation in International Law*'. In his introductory paper Professor B. A. Wortley (Manchester) set out from the thesis that in order to aquire a title by expropriation, valid at international law, two conditions must be fulfilled: *firstly*, the expropriating authority must be one duly recognised according to the rules of public international law; *secondly*, the reason for expropriating, and the method thereof, must not be contrary to that conception of justice which is an integral part of international law. In elaborating these conditions, Professor Wortley drew a fundamental distinction between cases where the expropriating State was in possession of tangible property, and cases where that State was

endeavouring to obtain possession. The fact of a sovereign's possession was usually recognised by the courts of the world; but a title of ownership (as distinct from possession) depended on compliance with the requirements of public international law (as, *e.g.*, in cases of legitimate capture or condemnation as prize). In that respect, it was legitimate for the victors after a successful war to provide for measures of *post-liminium* and restitution in relation to illegal acts committed in the course of the war. Such acts of restitution were to be recognised throughout the world; and, that not merely by virtue of the *lex loci*. Indeed, local legislation was merely ancillary to the rights of the true owners; it was not a 'root of title', but legislation of an auxiliary and confirmatory character only. But even where expropriation was carried out not in connection with any act of war, but simply by virtue of the civil or criminal law of the expropriating State, the title might be considered invalid by foreign courts—*e.g.*, in cases where judgment was given against the principles of natural justice, or the former owner was deprived of his property solely for political reasons, or expropriation was carried out arbitrarily and without indemnity. Where the expropriating State was seeking possession of tangible property situate abroad, it would not necessarily receive the assistance of a foreign court if the only title that could be displayed was based on national legislation of a penal, political, fiscal or confiscatory character; likewise, trustees or commissioners nominated solely as a result of political or penal confiscations had no rights outside the territory of the nominating State. There were various subtle forms of expropriation applicable to intangible movables or choses in action, such as the devaluation of currency, the barring of actions for normally actionable wrongs, and the prohibition of discharge of debts. In all these cases, the ultimate protection of interested parties abroad lay, possibly, in a claim for a denial of justice exercisable through diplomatic channels. Again, a State could try to gain possession of assets situated abroad, by dissolving the corporation owning such assets through its foreign branches; in such cases it was open to the *lex loci* to deny access to the dissolving State, by disposing of the assets for the benefit of creditors or shareholders or both. Finally, as a general rule, it could be stated that States which did not recognise the international validity of rights created under international law, could themselves be estopped from claiming such rights.

In his closing *Presidential Address*, Sir Cecil Hurst said that there were two subjects to which he particularly wanted to direct the thoughts of the Conference. The first of these was *Codification*. He (Sir Cecil), had expressed the view in a paper read before the

Grotius Society some nine months before, that if any progress was to be made, the immense task of working out an acceptable formulation of the existing rules and precepts of international law must be undertaken by international lawyers working purely as scientists and in their private capacity. Since then, a strong committee of the International Law Association had taken a similar view in a masterly and comprehensive Report prepared for the Prague Conference of that association. The United Nations had also taken action : the General Assembly had set up a committee consisting of representatives of 17 member States to study the methods by which the progressive development of international law and its eventual codification could be encouraged. Whatever was to emerge from the efforts of the I.L.A. and of the United Nations, Sir Cecil still thought that the Grotius Society ought to consider whether its members could not take in hand the work of beginning to prepare some sketch, some outline of the work that would have to be done. However modest, however incomplete, the proposals emerging from the Society's efforts might be, they would have the great merit of encouraging international lawyers in this country to set their minds working on the great task of getting formulated in a clear and intelligible form easily understood by the man in the street, the rules on which the well-being of the ordinary citizen was so largely dependent.

The other subject which required urgent consideration was the proposed International Bill of Rights. In theory, the world was at peace; but there were countries whose inhabitants did still not enjoy those fundamental freedoms for which the Allies had fought. The difficulties in the way of ensuring universal respect for fundamental freedoms were partly political, partly legal; the Grotius Society could only be concerned with the latter. Its line of approach was clear; members could make a useful contribution by studying the subject, appraising its difficulties and solutions and promoting a sound, wise and well-educated public opinion in this country—a public opinion to ensure that the Government knew that it had the solid backing of the country when it was taking up the subject of human rights in the General Assembly of the United Nations. The great problem before the United Nations—and before the world—was this : how to bring about a state of affairs in which, through the operation of international law, a State would have a legal obligation to give its nationals the rights and freedoms which it was the purpose of the International Bill of Human Rights to secure? At present, the matter was still generally understood to fall within the domestic jurisdiction of the State and to be immune from international regulation. But how far exactly did the

principle of the sanctity of domestic jurisdiction extend? There was a problem worthy of wider and more exhaustive study at the hands of international lawyers than it had received hitherto. Admittedly, there was nothing to prevent a State from binding itself by treaty to accord to its nationals the desired rights and freedoms; unfortunately, opposition to such a treaty was likely to come, precisely, from those States where the Rights of Man were conspicuous by their absence. The White Paper recently published by the British Foreign Office did not, therefore, propose to advocate the conclusion of a treaty in the technical sense, as the method to be followed. What the Foreign Office suggested, was the adoption by the General Assembly of the United Nations of a resolution to which the International Bill of Human Rights would be annexed; that scheme seemed well adapted to achieve the high purposes enshrined in the Charter—provided the States which had adopted the Charter had really meant what they said when they declared their desire to assist in the realisation of human rights and fundamental freedoms for all.

But what was the world going to do if a State refused to concur in the adoption and enforcement of an International Bill or, indeed, displayed an attitude of hostility and opposition? Could the existing principles of international law help in such circumstances? He (Sir Cecil), believed that they could; and he felt that this was a subject which the Grotius Society ought to study and explore. In that study it might well be guided by the principle adopted in the U.K. draft of the Preamble to the proposed International Bill; namely, that ' the denial of human rights and fundamental freedoms endangers the general welfare and friendly relations among nations . . . '. If those words were true, they seemed to bring all cases where human rights were denied within the principle of justifiable intervention. No doubt, a great deal could and would be done in such cases before anything in the nature of intervention was regarded as desirable or possible, but the pressure of public opinion, however much it might be frustrated by iron curtains, was likely to be more effective if in the last resort intervention was legally justifiable.

The Conference was preceded by a dinner given by the Grotius Society in the New Hall, Lincoln's Inn, on Friday, July 11. The guest of honour was the Rt. Hon. Lord Jowitt, L.C., whose address on ' The value of international law in establishing co-operation among nations ' is printed in full on page 295 of this issue.

The second principal speaker was Professor Jules Basdevant, Vice-President of the International Court of Justice, who gave an admirable address on ' Some points of international law arising out

of the French Armistice period from June, 1940, to May, 1941'. Professor Basdevant continued as legal adviser to the French Foreign Office after the collapse of 1940 and in that capacity fought consistently for the scrupulous application of the rules of international law to the regime imposed upon France by the Armistice with Germany. Speaking in French, Professor Basdevant gave many instances of the difficult problems that had arisen day by day in the various spheres of government, and of the solutions he himself had advocated; and he wound up this fascinating account with the story of his resignation from the service of the Vichy Government, prompted by the unneutral behaviour of Marshal Pétain and his Ministers in placing military facilities at the disposal of the German army of occupation.

COUNCIL OF FOREIGN MINISTERS, MOSCOW, 1947

The Council of Foreign Ministers, which met in Moscow in March and April, 1947, was mainly concerned with political and economic matters with respect to Germany and the Treaty for the Re-Establishment of an Independent and Democratic Austria. Economic unity, level of industry, reparations, the demilitarisation and democratisation of Germany were among the subjects over which the Ministers struggled. Out of the welter of politics, there emerged three salient issues of legal interest.

They were :—

A. Should there be a Peace Treaty 'with' or 'for' Germany?

B. Did the Potsdam Agreement supersede the Yalta Agreement on the subject of reparations?

C. The problem of German assets in Austria.

While these problems were considered at Moscow, agreed solutions were not found. The purpose of this note, however, is not to suggest the best solutions or to prophesy as to what will ultimately be done : it is only to indicate the nature of the problems which were considered at the Moscow Conference.

A. A Peace Treaty 'With' or 'For' Germany

When the procedure for drawing up the Peace Treaty was being discussed, much time was spent on the small but important point as to whether it should be described as a Peace Treaty 'with' or 'for' Germany. The point of wording was eventually settled in characteristic international fashion by using the phrase 'German Peace Treaty'. The point of substance, however, remained. The principal question was whether there should be a Treaty between the Allied Powers imposed upon Germany or whether there should

be a Treaty between the Allied Powers and Germany. It was generally realised that the Peace Treaty must be a hard one for Germany, and it was thought by many to be undesirable that there should be a Treaty signed and ratified by the Government of Germany and not approved by the people, which might later be repudiated by the Germans on the ground that formal consent had been given without the real consent of the people.

To avoid this situation it was suggested that Germany might be placed under an international regime which would be brought into force by agreement between the Allied Powers. This procedure would not be without precedent; one could point to the examples of Danzig, the International Zone of Tangier and, more recently, Trieste. In the last analysis it must be confessed, however, that such regimes depend upon the imposition of the will of several Powers upon the territory concerned and upon the ability of those Powers to enforce their will.

It was suggested in the case of Germany that the legal position might be strengthened by writing into the constitution of Germany the provisions of the German Peace Treaty. Initially, this would have the advantage of giving the provisions of the Treaty some legal status in Germany, but there would still be the disadvantage that internationally there would be no Treaty obligation binding upon Germany, because Germany would not have become a party to the Treaty. Moreover, there would be the further disadvantage that so far as the provisions of the Treaty were part of the Constitution of Germany they would legally be subject to amendment by the same procedure as the rest of the German Constitution.

Another proposal was that, admitting that ultimately Germany should become a party to the German Peace Treaty, provisions should be put into the German Constitution requiring Germany to ratify the Treaty and making the exercise of all powers under the Constitution subject to the provisions of the Treaty. While from the legal point of view there does not appear to be any objection to the second half of this proposal, the first half does raise a problem. If the German Constitution is adopted and comes into force before the Treaty is drafted, the provision requiring ratification would be in the nature of a blank cheque and would not be a satisfactory means of obtaining the consent of the German people to the terms of the Treaty. In these circumstances, the mere fact that the Constitution received the approval of the people would not really help. Alternatively, if the Constitution is to be adopted by a referendum to the German people after the Peace Treaty has been drafted, the Constitution containing the provision for ratification

might be rejected. The risk of rejection would be much the same as if the Treaty itself were submitted for the approval of the German people before ratification on behalf of Germany.

B. Did the Potsdam Agreement Supersede the Yalta Agreement on the Subject of Reparations?

By the Yalta Agreement of February 11, 1945, the heads of the Governments of the United Kingdom, the United States, and the Union of Soviet Socialist Republics agreed that reparation in kind was to be exacted from Germany in the three following forms:

(a) removals from capital equipment;
(b) annual deliveries of goods from current production for a period to be fixed;
(c) use of German labour.

The details were to be worked out by an Allied Reparation Commission. The United States and the Soviet delegations agreed that the Commission should take as a basis for discussion the suggestion of the Soviet Government that the total sum of reparation in accordance with (a) and (b) above should be twenty billion dollars, of which 50 per cent. should go to the Soviet. The United Kingdom delegation was of the opinion that no figures of reparation should be mentioned. At the Council of Foreign Ministers in Moscow in 1947 the Soviet delegation pressed for some arrangement providing for deliveries out of current production by way of reparation on the basis of the Yalta Agreement. This was opposed by other delegations which took the view that the Yalta Agreement on reparations had been superseded by the Potsdam Agreement of August 2, 1945, which made no provision for reparation from current production.

Leaving aside arguments which might be based on the proceedings leading up to the Potsdam Agreement and upon the subsequent history of the Level of Industry Plan for Germany, the following seem to be the principal arguments on this question.

In favour of the point of view that the part of the Yalta Agreement which deals with reparations is still binding, it may be observed that there is no mention anywhere in the Potsdam Agreement that the Yalta Agreement is terminated or superseded.

On the contrary, the Potsdam Agreement states that it was adopted 'in conformity with the decision of the Crimean Conference' and that 'the aim of the Potsdam Agreement is the fulfilment of the Crimean declaration on Germany'. From these quotations it may be contended that so far from terminating the

Yalta Agreement, the Potsdam Agreement confirmed it. If one is asked to explain then why the Potsdam Agreement made no provision for reparation from current production, the answer may be that the Potsdam Agreement was made so soon after Germany's capitulation that it was not possible at that time to clarify the question of deliveries from current production and that all that could be done was to leave the principle set out in the Yalta Agreement for detailed development and application at some later stage. In other words it may be said that the Potsdam Agreement developed and fulfilled the Yalta Agreement so far as was possible in the circumstances but left the fulfilment of the remainder of the Yalta Agreement to the future.

The main argument on the other side is that while the Potsdam Agreement did not expressly supersede the Yalta Agreement it was a new agreement on the whole subject of reparation from Germany and that it represented complete fulfilment of the Yalta Agreement on reparation.

This may be the correct explanation of the quotations from the Potsdam Agreement given above, and is further supported by reference to the provisions of Part III of this Agreement (Reparations from Germany) which contains a complete statement of the sources from which reparations are to be taken. Paragraph 1 says without qualification that reparation claims of the U.S.S.R. shall be made by removals from the zone of Germany occupied by the U.S.S.R. and from appropriate German external assets. Likewise, paragraph 3 says that the reparation claims of the United States, United Kingdom and other countries entitled to reparations shall be met from the western zones and from appropriate German external assets. These unqualified statements seem to suggest that the Potsdam Agreement was attempting to state all sources from which reparation claims were to be satisfied.

Another argument is that the limitation of reparation to a sum of 20 billion dollars and the division of that sum suggested at the Crimea Conference were abandoned in the Potsdam Agreement. The latter does not place any fixed limit on the amount of reparations, and the division as between the U.S.S.R. and the Western Allies is placed on a geographical basis. This entirely new approach may be taken to indicate that the authors of the Potsdam Agreement were intending to deal with the whole subject of reparations afresh, and not merely to expand and apply part of the Yalta Agreement leaving the rest outstanding.

C. The Problem of German Assets in Austria

The division of German foreign assets on a geographical basis was provided for by paragraphs 8 and 9 of Part III of the Potsdam Agreement.

The Soviet Government on the one hand renounced all claims to German foreign assets in all countries except those specified in paragraph 9. By paragraph 9, the United Kingdom and the United States renounced all claims to German foreign assets in Bulgaria, Finland, Hungary, Roumania and eastern Austria.

It is by virtue of the reference to eastern Austria that it becomes clear that German assets in Austria were intended to be subject to reparations as German 'external' or 'foreign' assets. This created a complicated and somewhat artificial situation, because Austria, since March, 1938, had not been a foreign country vis-à-vis Germany, but had been incorporated into the German Reich. Moreover, the Anschluss had enabled Germany to obtain economic advantages in Austria which would not normally have been obtained in a foreign country. It is consequently extremely difficult to say what should or should not properly be regarded as a German asset in Austria within the meaning of the Potsdam Agreement and for the purposes of the Treaty for the Re-Establishment of Austria.

By far the greater part of the discussion on German assets in Austria was on their definition. It is not feasible to set out in very precise terms the issues that were raised. The arguments were extremely complex and often the issues were not made very clear by the delegations themselves. It is possible, however, to indicate broadly the main issues that were considered.

It was generally recognised that property which belonged to Germany or German nationals before the Anschluss and which had remained German up to the time when the German occupation of Austria was terminated, should be regarded as German assets within the meaning of the Potsdam Agreement. It was also generally assumed that the word 'assets' should be read in a wide sense to include all property, rights and interests.

More difficulty arose as to the tests for determining whether a particular asset should be regarded as German owned or not. In the case of assets owned by individuals their German nationality before the Anschluss could be taken as a test, but in the case of German corporations there was a difference of opinion as to whether their place of incorporation or siège sociale should be the final test or whether it would be correct to look behind the apparent national character of the corporation and to treat as German assets only such part of the assets of the corporation as corresponded to the

proposition of interest of the ultimate German beneficial holders of shares in the corporation. In particular, it was contended by the United States, United Kingdom and French delegations that the beneficial interests of United Nations and United Nations nationals in corporations created under German law, or having siège sociale in Germany, should not be prejudiced by the treatment of the property of the corporation as a German asset in Austria.

Similar difficulties were considered in relation to Austrian and other non-German corporations.

These difficulties arose in relation not only to assets which were German before the Anschluss, but also to those which became German after the Anschluss. In the latter case, however, there were further problems. It is well-known that the Germans used their position of dominance in Austria in order to acquire property improperly. This was done sometimes by force or duress, sometimes by laws which were directed against particular classes of people, sometimes by the confiscation of property on purely racial and religious grounds and sometimes by the exercise of general political and economic pressure. Attempts were made to draft provisions for the Austrian Treaty which would take adequate account of these factors, but it was found impossible to reach agreement between all four delegations on the provisions that should be made.

In addition to the definition of German assets in Austria, three other important problems in this connection were considered during the Moscow Conference.

First, what test should be applied to determine whether, and to what extent, assets should be regarded as being located in eastern or western Austria. Let us take an illustration of the way in which this problem might arise in practice. A German corporation owns all the shares in a subsidiary Austrian company which has part of its physical assets in eastern Austria and part in western Austria. The head office of the subsidiary is located in western Austria.

At first sight, the shares in the Austrian company would appear to be the German asset. The question that arises is whether all the shares should be treated as being in western Austria because the head office of the company is there or whether, as suggested by the United Kingdom delegation, the shares should be divided as between eastern and western Austria in the same proportion as the physical assets which are located respectively in the two parts of Austria. Another possible solution would be to ignore the legal entity of the Austrian company and treat the physical assets as being German owned. This solution would be practicable where the shares in the Austrian company are all German owned, but

would be difficult to apply where, for example, only 60 per cent. of the shares were German owned.

Secondly, there was the problem as to the status of the assets which pass as reparations. The word status in this connection is used somewhat loosely and in fact the problem has two distinct aspects.

The first aspect is the extent to which any property, right or interest should be taken subject to obligations or claims to which it was subject in the hands of its German owners. It would seem to be axiomatic that the reparation claimants can receive no more than the German owners are able to give. This simple axiom, however, was not freely admitted by the Soviet delegation. The second and perhaps more important aspect of this problem is the extent to which any assets in Austria received as reparations should be subject to Austrian law. The problem arises chiefly because the assets will in most cases become State property belonging, so far as Austria is concerned, to foreign sovereign States. The practical issue which emerged at the Moscow Conference was whether the assets should be subject in all respects to Austrian law and therefore subject inter alia to the Austrian nationalisation laws, or whether the States receiving the assets should be protected either for a limited period or indefinitely against Austrian nationalisation so that they might enjoy the fruits of the assets received as reparations.

The third problem was whether there should be any special arbitration machinery for the interpretation and application of the provisions of the Austrian Treaty with respect to German assets in Austria. Whatever provisions are included in the Treaty, it is almost certain, having regard to the complicated nature of the facts, that there will be disputes as to their interpretation and application. It was contended by the Soviet delegation, however, that the settlement of such disputes should be left to bilateral negotiation between the State concerned and the Austrian Government, and by the other delegations either that there should be some special machinery set up to deal with these disputes, or at least that they should be subject to any general provisions for the settlement of disputes that might ultimately be included in the Austrian Treaty.

Having failed to agree on principles which might be adopted for the purposes of the Austrian Treaty, the Council of Foreign Ministers decided at the end of the Conference to refer the problem of German assets in Austria and other unagreed Articles of the Draft Treaty to a Special Commission. It was anticipated that this Commission would set up a committee of experts and that

attempts would be made to settle differences in the light of concrete facts. The Commission began its work in Vienna early in May, 1947, but at the time of writing it remains to be seen whether the more practical approach will produce fruitful results.

International Law Commission of the United Nations

The development of international law and its eventual codification is one of the functions of the United Nations. Article 13 (1) (a) of the Charter specifically lays upon the General Assembly the responsibility for initiating studies and making recommendations in this field. To implement these provisions, the Assembly at its last session appointed a committee of seventeen members to consider how it should carry out the Charter's mandate.

On June 16, 1947, this committee reported, recommending that an International Law Commission, composed of fifteen 'persons of recognised competence', be established by the General Assembly to 'carry out the progressive development of international law and its eventual codification'. This report was submitted for examination to the Assembly's Sixth (Legal) Committee which began its discussions on the subject on September 25, 1947.

The question before the Sixth Committee was therefore whether it should recommend to the General Assembly that such an International Law Commission be established and, if so, on what terms and conditions. It is also within the functions of the Committee to make any other recommendations for implementing the provisions contained in the Charter on this subject.

During the first discussions, three resolutions were proposed. Whilst all three agreed that an International Law Commission should be created by the Assembly, they differed, in the main, on whether it should be created at this or the next session. The proposals were :

United States : The Assembly would create an International Law Commission at this session. Members to serve for three-year terms would be elected by the Assembly from a panel, four candidates to be nominated by each Member State. The Commission would have its headquarters at the seat of the United Nations and make an annual report to the Assembly. The Secretariat should develop a group of specialists which would be under the functional supervision of the Commission.

To this proposal the United Kingdom offered an amendment which would postpone formation of the Commission for another year until the third session of the Assembly. Further amendments on details were also offered by the Netherlands, Canada, and Egypt.

France : The Assembly would create an International Law Commission but, 'considering the necessity of directly and immediately associating the Members of the United Nations in the work to be undertaken', the General Assembly itself would decide what studies should be made by the Commission. The Commission would be instructed to submit in 1948 a draft multilateral convention embodying the principles of the Nuremberg Tribunal and the draft declaration of the Rights and Duties of States. The Commission would submit to the next session of the Assembly a list of other questions it considers desirable to study.

U.S.S.R. : An International Law Commission would be created at the third session of the Assembly. Meanwhile the Committee of Seventeen, created by the Assembly in the first session, would continue its work. It would receive and systematise the opinions of the Members and present a draft plan to the third session of the General Assembly.

After discussions on the resolutions and their amendments, the Sixth Committee referred them to a sub-committee (numbered 2), to draft a single document for consideration by the whole committee.

On September 29, the Sub-Committee made several decisions which were embodied in an interim report to the full committee. By a vote of 8–7, it decided that the International Law Commission should be elected at the present session of the Assembly. It also decided by a vote of 13–2 that the proposed Commission consist of fifteen members, and it unanimously voted that Commission members should serve on a part-time basis.

A decision to postpone election of members to the proposed International Law Commission until the next session of the General Assembly was adopted by the Sixth (Legal) Committee on October 2. It also adopted the Interim Report of its Sub-Committee on Privileges and Immunities recommending that the Assembly adopt a single convention supplemented by annexes to show the divergence of requirements of different specialised agencies. It set up a sub-committee to examine the report of the Committee on Procedures and Organisation referred to it by the General Assembly. The Sub-Committee subsequently met on October 2 and 6. The Committee debated the crime of genocide at its meetings held on October 3 and 6.

NULLITY JURISDICTION

In two recent decisions, *Robert* v. *Robert*, [1947] 2 All E.R. 22,[1] and *De Reneville* v. *De Reneville*, [1947] 2 All E.R. 112,[2] the jurisdiction of the English Court to annul a voidable marriage has again been considered. The first of these will probably be regarded by private international lawyers with dismay, the second with gratification. Although every decree of nullity declares in effect that the parties have never been married, it is well established that the parties to a voidable marriage possess the status of husband and wife and that it is a status which cannot be challenged by anyone except themselves. On principle, therefore, a suit for the destruction of this status, whether by dissolution or by annulment of the marriage, should be justiciable only in the domicile. Nevertheless, it can now be taken as undoubted that nullity proceedings will also be entertained by the High Court if the marriage was celebrated in England or if both parties are resident in England. That jurisdiction should be assumed in the matrimonial residence is unobjectionable, provided that in the case of a voidable marriage the *lex domicilii* is applied. What is deplorable, and what should be fought to the death, is that the residence of the petitioner alone should be regarded as a sufficient basis of jurisdiction. If the High Court is satisfied with the residence of the petitioner in England, it must presumably recognise the effectiveness of decrees granted in a foreign country where the petitioner alone was resident, even transiently resident, at the time of the suit, but, as the tendency of courts is to apply the *lex fori* to the exclusion of the *lex domicilii*, there will be nothing to prevent a dissatisfied spouse from resorting to a country where annulment is to be had on easy terms. It is therefore difficult to feel much enthusiasm for the decision of Barnard, J., in *Robert* v. *Robert*.

In that case a Guernsey woman had married a Guernsey man in Guernsey. The parties were continuously domiciled in Guernsey. They never lived together and on October 9, 1945, the wife presented a petition for nullity on the ground that the husband had wilfully refused to consummate the marriage. On that date the wife, who had joined the A.T.S., was resident in England, the husband in Guernsey. The petition was served on the husband on May 1, 1946, by which time the wife had abandoned her English residence and had returned to her home in Guernsey. The learned judge, satisfied that this nebulous connection with England was sufficient, assumed jurisdiction. He thus went further than

[1] See *International Law Quarterly*, Vol. 1, p. 247.
[2] See p. 369, *infra*.

Bucknill, J., in *White* v. *White*, [1937] P. 111, where the petitioner wife had been continuously resident and domiciled in England prior to going through a ceremony of marriage with the respondent in Australia. Moreover, in that case the marriage was void because it was bigamous.

In *De Reneville* v. *De Reneville* a more satisfactory result was reached. In that case the wife, born in England of English parents, was domiciled and resident in England until she married the respondent at Paris in 1935. The respondent was a domiciled Frenchman. The parties resided in France or Algeria until the outbreak of war in 1939, when the wife returned to England, and, except for a period of six weeks in 1940, remained there continuously apart from her husband until she presented her petition for nullity in 1946 on the ground of the non-consummation of the marriage. The husband remained throughout resident in the French Republic, except for a short visit to England in 1938. The petitioner's connection with England, therefore, was far more substantial than in the case of *Robert* v. *Robert*. She was English born, she was domiciled in England until her marriage, and she was resident in England since her birth except for the first four years of her marriage. In *Robert* v. *Robert*, the petitioner was Guernsey born, she was always domiciled in Guernsey, and her only connection with England was that she resided there for three years and two months during her service with the Auxiliary Territorial Service. On the other hand, the respondent in the *De Reneville Case* had visited England only once for a short period; in *Robert* v. *Robert* he was resident in England for some five years as a member of the Royal Air Force Regiment. In the *De Reneville Case* the respondent entered an appearance and protested the jurisdiction, whereupon Jones, J., held that the residence of the wife was insufficient to found jurisdiction. The learned judge felt himself able to distinguish *White* v. *White* because of the exceptional circumstances that attended that case. The parties had lived together for only two days, the respondent was married to another woman at the time of the ceremony, and he did not appear to the petition. The learned judge evaded *Robert* v. *Robert* by stressing the absence in that case of a protest against the jurisdiction. He evaded *Roberts* v. *Brennan*, [1902] P. 143, by refusing to be convinced that the respondent in that case was out of England at the time of the proceedings. It is suggested that he might justifiably have distinguished both *White* v. *White* and *Roberts* v. *Brennan* on the ground that they were each concerned with a void marriage.

In the result, then, the law is now even more confused than

it was before, which is saying a lot. Whether residence of the petitioner alone is a sufficient basis of jurisdiction in the case of a voidable marriage apparently depends upon whether the respondent enters an appearance. If we believe that to be a sound rule, then, as was once remarked by the Duke of Wellington, we are capable of believing anything.

Another question that Barnard, J., asked himself in *Robert* v. *Robert* was whether, having assumed jurisdiction, he should apply the *lex loci celebrationis* or the *lex domicilii*. It would seem that, since the object of the suit was to terminate an admittedly existing status, the *lex domicilii* was the governing law. The learned judge, however, preferred the *lex loci celebrationis* on the ground that wilful refusal to consummate a marriage is 'a defect in marriage, an error in the quality of the respondent'. This reason is a little difficult to understand. If a marriage is attacked as having been defective in its formation, as for instance if there has been fraud, coercion or a want of proper formalities, then indeed the *lex loci celebrationis* is applicable, but it scarcely seems to be the appropriate law by which to determine whether a man's status of husband shall be annulled owing to his conduct after, and perhaps many years after, the marriage ceremony. Again, impotence which causes a failure to consummate a marriage is presumably an incapacity that falls to be determined by the *lex domicilii*. Does a wilful refusal to consummate the union fall into a different category? The question was not material in *Robert* v. *Robert*, since wilful refusal was a sufficient cause for nullity both by English and by Guernsey law.

I.L.O.: Annual Conference, 1947

The 30th session of the I.L.O. Annual Conference was held at Geneva from June 19 to July 11, 1947; it was the first session, since 1939, to be held at the Palais des Nations.

The Conference had a crowded programme which resulted in a number of ambitious Draft Conventions and Resolutions. Indeed, two of the Resolutions were so momentous in scope and implications that Mr. David Morse (U.S.A.), chairman of the committee responsible for the drafting, had occasion to refer to them as 'probably the most significant development in the history of the I.L.O. and certainly the most significant development in this field in the world'. These two Resolutions were included in a Report (adopted by the Conference for submission to the U.N. Economic and Social Council) on the principles of freedom of association and the protection of the right to organise.

It will be recalled that in April, 1947, the Economic and Social Council decided to call for a report from the I.L.O. on this subject; the decision of the Council was prompted by representations made to it earlier in the year by the World Federation of Trade Unions which drew the Council's attention to the prevalence in various countries of attacks on trade union rights, dismissals of organised workers, arrests of workers' leaders and Government interference with workers' organisations. Further representations on the same subject were made to the Council by the American Federation of Labour.

The Council's decision to refer the matter to the I.L.O. was noteworthy in two respects : on the one hand, it happened for the first time that the Council referred a problem to one of the specialised agencies; secondly, the problem thus referred was known to be one with which the I.L.O. had repeatedly, but quite unsuccessfully, tried to grapple before.

In the perspective of these unsuccessful efforts of the past, the amount of agreement reached at the Conference was most remarkable; the opportunity offered to the I.L.O. for firmly establishing its jurisdiction over a highly controversial subject of far-reaching political implications was eagerly seized.

The first of the two Resolutions defines the principles which make up the substance of ' freedom of association ' in the sense of a universal right of employers and workers, without any distinction whatsoever, to establish organisations of their own choosing. Some of these principles were controversial at the Conference; this refers particularly to the ' closed shop ' (which is fully sanctioned by the Resolution in its present form) and to the rule that collective agreements negotiated between organised workers and organised employers shall be binding on unorganised employers also. These controversial points will come up for further discussion next year, but subject to such amendments as these fresh discussions may yield, it is proposed to embody the principles now defined in the first Resolution in a Draft Convention at the next Conference.

The second Resolution deals with machinery for the protection and enforcement of the right of free association. No specific agreement has yet been reached on this subject. By its very nature, it is more controversial than the principles embodied in the first Resolution; for obviously, the establishment of, *e.g.*, an agency in the nature of an International Labour Inspectorate would cut across the boundaries of national sovereignty in a more ambitious way than any suggestion previously mooted. Accordingly the Resolution calls on the Governing Body and the Office to conduct

further inquiries into the proposals discussed at the Conference and to report next year.

Thus the battle royal for the enforcement of conventions by specific international machinery has been deferred until 1948; however, the general preoccupation of the Conference with the imperfections of the existing machinery has already yielded one significant result. It takes the form of a new Convention laying down the principles on which the I.L.O. proposes to encourage the establishment of Labour Inspectorates in the member countries. This Convention if it were to secure sufficient ratifications, could at least bring about the production of official reports of a kind that might be more helpful than the existing machinery in showing how far the various member countries are meeting their obligations in labour matters.

In the field of colonial problems, the Conference has produced five Conventions which—if they receive sufficiently wide support—might well add up to something like a new Bill of Rights for native labour.

In the past, it was left largely to the discretion of member Governments to decide how far Conventions adopted by them should be applied in their colonies. The new Conventions aim at a substantial curtailment of that discretion; they define specifically the standards of social policy to be applied in 'non-metropolitan territories'. The first Convention deals with the general objectives of social policy; some of these objectives, *e.g.*, the principle of equal pay (which Great Britain has as yet been unable to enforce even in her metropolitan territory), are obviously over-optimistic. The second Convention sets out to safeguard the right of free association and to lay down principles for the settlement of labour disputes; the third seeks to establish Labour Inspectorates for supervising the effective observance of adopted standards; the fourth proposes to limit the duration of labour contracts with natives—a problem of considerable importance in view of the disrupting effect of long-term contracts on family life and the traditional social pattern of the native village; and the fifth attempts to secure the compulsory extension to non-metropolitan territories of twelve previous Conventions on international labour standards.

It is difficult to assess the positive effect of all these ambitious initiatives; the somewhat depressing statistics of ratifications in the past do not justify exaggerated optimism. One thing however, is certain. This first Annual Conference since the adoption of the new constitution of the I.L.O. can certainly not be accused of either timidity or lack of imagination. The nettles have been well and truly grasped.

THE ANGLO-FRENCH LEGAL CONFERENCE, 1947

An Anglo-French Legal Conference organised by The Law Society with the co-operation of the General Council of the Bar, of the Four Inns of Court and of the Society of Public Teachers of Law, was held in London during the first week of June, 1947. This conference had as its primary object the strengthening of the bonds between English and French lawyers, among whom there was strong support for the idea of a reunion.

At the opening session of the conference, which was attended by the Lord Chancellor, by Monsieur Roche, representing H.E. the French Ambassador (who was unfortunately unable to be present), and by many distinguished members of the profession, Sir Douglas Garrett, the President of The Law Society, formally welcomed the guests and pointed out that the meeting of the delegates of the two countries was wholly spontaneous and was not the result of any request or even suggestion from any Governmental or other official authority, although clearly the conference had received the support of the Governments of both England and France. The Lord Chancellor, in his address to the conference, declared that he had no doubt that great advantage would be derived by the lawyers of England in discussion with the delegates from France not only on the specific questions of the *Droit Administratif* and other matters but also on the broader concept of how in the world of today the rights of the individual could best be preserved against the background of communal planning.

During the week the conference divided into committees which considered certain points of law and legal procedure in England and France on which, on the invitation of the Joint Committee responsible for the organisation of the conference, papers had been composed in both French and English. These papers were considered by the committees sitting under the alternate chairmanship of the authors of the French and English papers respectively. The subjects chosen for discussion were :—

Group A 1. Organisation of the Courts.
2. Organisation and Remuneration of the Legal Profession.

Group B 1. The Scope and Function of Administrative Tribunals and the Distribution of Issues between Judicial and Administrative Tribunals.
2. Proceedings between the Citizen and the State.

Group C 1. Civil Procedure, *viz.* : The General Principles of Procedure in Civil Actions up to Obtaining of Judgment.

2. Procedure for Enforcing Judgment; and Bankruptcy and Liquidation.

Group D 1. Arbitration.

2. Rules of Evidence.

At a final Plenary Session of the conference a report was read in respect of the work of each of the committees by the author of either the French or the British paper which had been considered.

Me. Bucaille, with Mr. Roderick Dew and Mr. A. R. N. Cross, contributed papers on the subject of 'Organisation of the Courts'. In the course of his report to the conference Mr. Dew stated that it had been found that the English members of his committee were surprised by the cheapness of French proceedings while the French members were surprised at the expense of English proceedings. It was not thought that the evidently decentralised procedure in France led to greater expedition. The French members of his committee had been of the opinion that the higher social position enjoyed by the English judges was an advantage in that it meant a higher regard for law. Discussing the role of the jury the committee had felt that, on the whole, trial in civil cases was better by judge alone. Comparing the right of appeal in the two countries it had emerged that the fact that in France each party pays his own advocate's fees, the loser being liable only for the court fees, clearly affected the number of appeals in France. In conclusion the committee had reviewed the extension of public tribunals in both countries which it was generally agreed was on the whole undesirable.

Papers on the subject 'Organisation and Remuneration of the Legal Profession' had been prepared by Me. Raviart and Mr. L. C. B. Gower. Mr. Gower reported that his committee had been impressed with the greater expense of litigation in England but considered that this was primarily due not to any deficiency in the organisation of the legal profession but to the more formal English Civil Procedure. Methods of legal education and training had been discussed when it had appeared that in France there was greater co-ordination between the Universities and the professional bodies. Remuneration of the *avoué* in France was stated to be to a large extent proportionate to the importance of the case and to the amount involved—a scheme which in many respects commended itself to the English members.

'The Scope and Function of Administrative Tribunals and the Distribution of Issues between Judicial and Administrative Tribunals' was the subject of papers by Me. Ponthus and Professor Goodhart. Professor Goodhart stated that it had been found that while the French system was less logical and complete than had

often been supposed, the British system in turn was not so haphazard and inadequate as it had occasionally been described. The committee had agreed that while there were difficulties in the establishment of any sort of administrative code (of which there was in fact some evidence in France), it was dangerous to suggest that there was any real distinction to be drawn between administrative and strictly legal justice; in either case the men responsible for the application of the rules were more important than the rules themselves. The view was expressed both by the French and the English members that parties appearing before administrative tribunals should be entitled to be legally represented.

Papers on the subject 'Proceedings between the Citizen and the State' were contributed by Me. Hersant and Mr. H. L. Street. Me. Hersant stated that although there was the fundamental difference in the law of the two countries inherent in the existence of the *Droit Administratif*, there were in fact many points of similarity in the problems which had to be faced in both England and France. In particular the committee had discussed the question of discovery of documents on the part of the State and had reached the conclusion that except in matters where the safety of the State was involved, the rights of the individual against the State should in principle be the same as against another individual and that where reasons of State were advanced as an excuse for departing from this principle, an independent tribunal should judge whether such reasons were valid.

Mr. J. G. Archibald contributed a paper on the related subjects of 'Civil Procedure *viz.*: The General Principles of Procedure in Civil Actions up to Obtaining of Judgment' and 'Procedure for Enforcing Judgment'; and 'Bankruptcy and Liquidation', the French papers being written by Me. Degouy and Professeur Solus respectively. There are clearly many essential differences between civil procedure in France and England. Possibly the greatest divergencies lie in the preparation of the *dossier* and the role of the *Juge Rapporteur* in France and in the actual procedure on the trial of an action. The judgment creditor in France was at least theoretically in a less favourable position than his counterpart in England as no execution was possible pending the hearing of any appeal. On the other hand there were many different types of executions open to the judgment creditor in France. In bankruptcy it was found that the actual working of the procedure in the two countries produced more similar results than would be suggested by a mere comparison of the legal machinery.

The committee discussing the subject of Arbitration considered papers written by Me. Quartier and Sir Lynden Macassey and were

generally of the opinion that parties to a contract should be competent to agree that no application be made to the court to decide any question of law or fact affecting any dispute which has been referred to Arbitration if after a dispute has arisen the parties have agreed upon a named arbitrator or upon machinery for appointing him. The committee, however, were not in favour of any alteration of the arbitration law of England so as to enable parties to a contract to agree if they so chose that the arbitrator was to be the sole and exclusive judge of the dispute referred to Arbitration.

Me. Dufour and Mr. G. D. Roberts were the authors of papers on the subject of the 'Rules of Evidence'. Professeur Battifol, who in the unfortunate absence of Me. Dufour, presided over the committee, reported that in France as in England the burden of proof normally fell on the prosecution or plaintiff. In some respects the French law required more detailed proof than the English law. His committee were convinced of the many advantages of the British system of cross-examination.

It is hoped that a permanent record of the work of the conference, which from every point of view was most successful, will shortly be available and that it may be possible to arrange similar conferences both here and in France in the future.

T. G. Lund.

AN INTERNATIONAL MARITIME COURT

An address on the subject of 'An International Maritime Law Court' was given by the Dutch Professor R. P. Cleveringa to a meeting of the Anglo-Netherlands Society held in the library at Lloyd's on June 6, 1947.

Professor Cleveringa said that more legal similarity was bound to contribute to an improvement of social conditions throughout the world. The most promising province of law in which such uniformity could be achieved was maritime law. Attempts to effect uniformity in that sphere had been numerous as is evidenced by the number of international conventions, including maritime liens and mortgages, the limitation of liability, bills of lading, collisions, salvage, the rule of the road at sea and the York/Antwerp Rules, all of which attested to a certain desire for maritime harmony. Nevertheless the actual situation in matters of maritime law was still far from representing an international legal unity and there still remained much to be done before that end could be reached. In the first place conventions with a tendency to uniformity did not embrace the whole of maritime law; secondly, the principal treaties did not contain more than 'certain rules', which left certain

particulars unsettled, and there were others which were only regulated in part. Thirdly, the success of the unifying treaties had been far from complete, so that there was still much left to be desired with regard to their geographical sphere of action. Even where legal uniformity had been confirmed by treaty it sometimes only existed in appearance.

If an International Court of Maritime Law should be recommended there were a number of aspects which would have to be taken into consideration: (1) What task could be assigned to such a court; (2) how would the competence of such a court be determined; (3) how would the different cases have to be submitted to the jurisdiction of the court; what authority would be given to its judgments; and (4) what benefit could be expected from its activity. There would also be other problems to solve, such as the appointment of its members, its residence, the languages, procedure, compulsory measures for the hearing of witnesses, financial structure, etc. The question also arose: ' Why only an international maritime-law court? Why not a law court for all civil and commercial litigation? ' On that point, it seemed to be wise to start on a limited scale and in a province where there was already a certain natural impulse towards legal unity, such as maritime law, or, on a larger scale, maritime and aerial law.

At the same time, any such international maritime law court must start cautiously; in the beginning it should be optional and not compulsory. Then there must be a period to see what would grow out of it. Perhaps from a moral point of view it would become ever more difficult to escape from the court's jurisdiction the more its reputation grew, and then, finally, the time would come to raise the question whether its facultative character should be changed into an obligatory one. It would be better for such a court to abstain from precedental authority. Then the importance of its judgments would depend upon the moral and scientific reputation it would achieve. If it was highly respected its judgments would inspire confidence although they had no compulsory authority; if not, they would not be of much value.

Benefits to be derived from such a court would first of all depend upon the frequency of its being used. In the beginning that would not be often, but that was no reason for refraining from the experiment, for the institution of the court might be a stimulation to make use of it.

With wise and upright judges, men who knew maritime law thoroughly and who also possessed legal artistry, the decisions of an international court of maritime law would be followed more and more on account of their general acceptability and the confidence

they inspired. That was the more readily to be desired, because in the province of maritime law there was a tendency towards mutual accommodation. If that hope was realised the international maritime court would drive maritime law ever more towards uniformity, or, at least, towards harmony. In giving its judgments it would be building up a series of decisions from which eventually a general rule could be formulated. Thus it would serve as a leader towards legal uniformity. Therefore, it seemed worth while to give it a trial.

EFFECT OF WAR ON CONTRACTS: RECENT TRENDS, JUDICIAL AND LEGISLATIVE [1]

The main principles of the effect of war on contracts were laid down in the decisions arising out of the war of 1914. The criterion of enemy character; the disability of an enemy to be an actor in the King's Courts; the status of enemy under protection; the general rule of abrogation of contracts requiring intercourse with an enemy; the grounds on which the court decides that a contract is 'frustrated'—all these principles had been elucidated in a number of leading judgments which remained unchallenged. The purpose of the present paper was to examine the way in which these principles had been applied by the courts of the United Nations during the war, to consider certain restatements of doctrine and to note the intervention in three important matters, of the Legislature.

Dr. Webber began by examining the reasoning in *Lace* v *Chantler*, [1944] 1 K.B. 368, where the Court of Appeal held that at common law, a lease 'for the duration of the war' does not create a legal term of years. The Validation of War-Time Leases Act, 1944, enabled such agreements to take effect as agreements for a tenancy of ten years subject to the right of either party to determine the tenancy by one month's notice given after the end of the war. For the construction of these agreements only (unless the context otherwise required), the dates of the end of the war in Europe and the end of the war in Japan were declared by Orders in Council and not under the Act. The Statute was still important, particularly upon the effect of other provisions in the agreement, such as an option for a further term. The whole agreement had effect as if the statutory term were substituted for the contractual

[1] Summary of the paper read to the Grotius Society on June 11, 1947, by George J. Webber, LL.D., of the Middle Temple, Barrister-at-Law. The full text of the paper will be published in Vol. 33 of the 'Transactions' of the Grotius Society.

term: *M. W. Investments, Ltd.* v. *Kilburn Envoy, Ltd.*, [1947] 1 All E.R. 710.

The unparalleled plenitude of emergency powers for the prosecution of the war conferred upon the Executive by the Emergency Powers (Defence) Acts, 1939–1940—in contrast with the limited powers conferred by the Defence of the Realm Consolidation Act, 1914—brought trade, industry and commerce and a large section of public and private life under administrative control. The number and varieties of contracts thus affected were incalculable. The Executive was vested, in effect, with an 'administrative plenary discretion': indeed, the doctrine of ultra vires could have no application to a Defence Regulation appearing to His Majesty to be necessary or expedient for one of the statutory purposes. The function of the court when an Order was challenged was to see that the power fell 'within the four corners of the powers given by the Legislature and to see that those powers were exercised in good faith. . . . Apart from that, the courts have no power at all to inquire into the reasonableness, the policy, the sense, or any other aspect of the transaction': *per* Lord Greene, M.R., in the *Carltona Case*, [1943] 2 All E.R. 560, 564.

Passing to the meaning and effect of 'enemy character', Viscount Simon, L.C., in the *Sovfracht Case*, [1943] A.C. 203, 209–212, definitively restated the law in the form of concise propositions. As Attorney-General he had appeared as *amicus curiæ* in *Porter* v. *Frendenberg*, [1915] 1 K.B. 857, 869, where his learned argument was fully reported. The House now approved Lord Reading, C.J.'s judgment in that case. In *Ex p. Kuechenmeister*, [1947] 1 K.B. 41,[2] a valiant attempt was made to argue that with Germany having ceased to exist as a State in international law, His Majesty was no longer in a state of war. But since the King made war and peace, the statement of the Secretary of State that the King was still at war was conclusive. The point had really been settled in the *Duff Development Case*, [1942] A.C. 797.

Dr. Webber referred to the report of the *Committee on Limitation of Actions and Bills of Exchange* (1945) [Cmd. 6591] which led to the passing of the Limitation (Enemies and War Prisoners) Act, 1945. For the position of an enemy the Limitation Act, 1939, made no provision and its definition of disability was exhaustive. The present Act suspended the statutory period of limitation where any person who would have been a necessary party to an action continued to be an enemy, or to be detained in enemy territory as a prisoner of war or civilian internee, and for twelve months after

[2] See *International Law Quarterly*, Vol. 1, p. 243.

ceasing to be an enemy or to be so detained, or after the passing of the Act, whichever were the later date.

The second round of the long and complicated *Schering* litigation raised the question: when, at common law, was a contract with a neutral abrogated? ((1913), 112 L.J.Ch. 138; [1944] Ch. 13; [1946] A.C. 219.) Simonds, J. (as he then was), had held that since the particular and complicated contract with a neutral guaranteeing an enemy debt by instalments would be likely to benefit the enemy, that contract at the outbreak of war was abrogated. The Court of Appeal sought to draw a distinction between the effect of war on contracts with an enemy and its effect on contracts with a neutral. Only a 'substantial probability' of benefit to the enemy would suffice to abrogate a contract with a neutral; a 'vague possibility' of such benefit would not suffice. The House of Lords, affirming by a majority the decision of the Court of Appeal, rejected this distinction. The question turned 'upon the nature of the transaction, not upon the parties to it': a contract with a neutral was not in a different category. The majority of the House agreed with Sir Arnold McNair's view (*Legal Effects of War*, 2nd. ed., pp. 93, 238) finding the clue in the proposition that although the war abrogated a right to further performance, it saved the right to the payment of a liquidated sum of money which would be treated as a debt and would survive the war. Here, nothing remained but to discharge an accrued debt by instalments subject to the assignment of claims against a German company. Lord Russell of Killowen and Lord Macmillan delivered opinions of weighty dissent. All the conditions for abrogation, they thought existed; this was a contract for the sale and purchase on specified dates of a number of choses in action. The payment of each instalment, progressively diminishing the liabilities of the German company, how, after the outbreak of war, could the contract subsist? Dr. Webber preferred the decision and the reasoning of the minority and thought that the expositions by Lord Russell and Lord Macmillan placed in proper light the effect of war on contracts for the benefit of an enemy.

Upon 'Frustration of Contract' the war had provided a great trilogy of decisions by the House of Lords. The *Constantine Case*, [1942] A.C. 154, laid down the onus of proof where frustration was pleaded. It was not for the party pleading frustration to prove that he had not caused or induced the error; it was for the party seeking to avoid the effect of frustration to prove that the event was due to the neglect or default of the other. The rule laid down was really one of policy, not of logic; the court in effect, chose between one new rule and another new rule, justifying its choice by reliance on analogies and ambiguous dicta. In the *Denny Mott Case*, [1944]

A.C. 265, Lord Wright gave the clearest and most unambiguous exposition of his 'heretical'—yet most satisfying—theory of frustration. Following Lord Sumner's 'pregnant statement' in the *Hirji Mulji* v. *Cheong Yue Steamship Co.*, [1926] A.C. 497, 509, Lord Wright regarded frustration as a 'substantive and particular rule which the common law has evolved', admitting of 'almost indefinite exemplifications'. The court had 'formulated the doctrine by virtue of its inherent jurisdiction'. To say that there was an 'implied condition' was no explanation—for when *did* you imply a condition? The result did not depend upon what the parties would or might have agreed: 'The doctrine is invented by the court in order to supplement the defects of the actual contract'. The court decided *ex post facto* on the view it took of the event that had happened and of its relation to the express contract.

The *Cricklewood Case*, [1945] A.C. 221, raised but did not solve the question whether frustration could apply to determine a lease. On the facts, a ninety-nine years' building lease made in 1936 was not determined merely because the war had practically put an end for the time being to private building. But Viscount Simon and Lord Wright thought that, in certain circumstances, a lease might be frustrated. A 'vast convulsion of nature' might swallow up the site, or a statute might prohibit permanently or for an indefinite period, the user of the land for the only purpose for which the lease was expressly granted. Lord Russell of Killowen thought that the estate in the land remained vested in the tenant: the court had no power to declare it to be divested, except upon the happening of an event provided by the lease. Lord Goddard agreed. Lord Porter reserved the point. Dr. Webber agreed with the opinion expressed by Viscount Simon and Lord Wright: the doctrine of frustration was 'modern and flexible'. The *Cricklewood Case* was remarkable for another reason: for the first time we had a comprehensive and authoritative opinion of 'frustration' given by Viscount Simon—a definition which would probably supersede previous fragmentary definitions.

The 'rule in *Chandler* v. *Webster*' that, upon frustration, 'the loss lies where it falls' and that a person paying money in advance could not recover it whether he had received anything in return or not, having uneasily prevailed for nearly forty years, was overruled by the House of Lords in the *Fibrosa Case*, [1943] A.C. 32. *Fibrosa* was a landmark in English law. The decision, Dr. Webber thought, was really judicial legislation although the principle applied was old—that, a man who had paid money and received nothing for it can, subject to his agreement, recover the money upon a total failure of consideration. The rule was now being

applied to a case where the contract had been performed in part but had become frustrated: failure of consideration referred not to the promise, but to the performance of the promise. On the other hand, the flexibility of the common law was subject to 'definite limitations'; the common law could not apportion a prepaid sum where the failure of consideration was partial, not total; that was the provision of the legislation. Some thought that the House of Lords missed a unique opportunity, but the authorities were too strong, too unanimous and too deep-seated. Of the many great speeches of Lord Wright, perhaps his speech in *Fibrosa* was the greatest. Judicially now, for the first time after many extra-judicial pronouncements,—and reinstating Lord Mansfield's great judgment in *Moses* v. *Macferlan* (1760), 2 Burr. 1005, 1008, 1012,—he expounded and declared a third category of the common law—'quasi-contract'. The action for money paid and received was employed as an instrument to prevent 'unjust enrichment'. The claim for repayment rested not upon the frustrated contract, but upon the fact that the defendant, having received the money, had in the event, no right to keep it: 'there was no intention to enrich him in the events which happened'.

In 1939, the Law Revision Committee had recommended legislation that, upon frustration, money prepaid—subject to a deduction for expenses—should be recoverable, unless the contract were severable. The 'rough' justice of *Fibrosa* depended upon a total failure of an entire consideration. A man might have to repay all the money although he had done nearly all the work which remained on his hands. The other party might have received a slender part of the consideration; if he had paid the whole price he could get nothing back.

By the Law Reform (Frustrated Contracts) Act, 1943, the Legislature met this challenge. The Bill had two objects. First, the recipient should be entitled to set off his expenses against repayment. Secondly, a person must pay a fair sum for the benefit received under a contract before it had become frustrated. The Act applied to contracts governed by English law frustrated on or after July 1, 1943. Money paid before the 'term of discharge' would be recoverable as money received for the use of the payor; money payable before that time would cease to be payable. Expenses incurred to perform the contract might be retained or recovered if the court considered it just in all the circumstances. A person obtaining a 'valuable benefit' before the time of discharge must pay such sum as the court in all circumstances (taking expenses into account) considered just. The parties might, by their contract

provide what was going to happen between them should the contract become frustrated. Although juristically this statute was based upon quasi-contract, it was a self-contained code and would be liberally construed, unconstricted by existing case law. The court's discretion, although it must be judicially exercised, was unfettered.

DISSOLUTION OF JEWISH MARRIAGES BY MUTUAL CONSENT

Bialik (*formerly Levison*) v. *Bialik*. Motion No. 66/47 (Palestine). In this case His Honour Judge Rigby, R/President of the District Court of Jerusalem, was confronted with a question of first impression and of exceptional importance. In his own words: 'It remains, therefore, for me to consider whether, as a matter of law, a divorce by mutual consent of members of the Jewish faith domiciled in (Palestine), but who are British subjects, would be recognised as valid according to English law'. The question may also be put in another way: Is a judicial divorce in the country of domicile essential to the recognition by English law of a foreign divorce?

The facts were simple. Two members of the Jewish community, domiciled in Palestine, were married in that country according to Jewish religious rites in 1940. The husband was a British subject, but he was Palestinian born, and he had always resided in Palestine. At the time of the marriage the wife was a Palestinian national, but on learning that her husband was a British subject she applied for, and obtained a British passport. In June, 1942, the parties were divorced by mutual consent in Jerusalem according to Jewish rites. In the instant proceedings the wife applied for a declaratory judgment that she was validly divorced from the respondent. After a valuable, and it is submitted a convincing, judgment, the learned judge granted the application.

The question was governed by Article 64 of the Palestine Order-in-Council, 1922, which provides that:—

> (1) Matters of personal status affecting foreigners shall be decided by the district courts, which shall apply the personal law of the parties concerned in accordance with such regulations as may from time to time be made by the High Commissioner.
>
> Provided that the district courts shall have no jurisdiction to pronounce a decree of dissolution of marriage except in accordance with any ordinance conferring such jurisdiction.

(2) The personal law of the foreigners concerned shall be the law of his nationality unless that law imports the law of his domicile, in which case the latter shall be applied.

The Attorney-General intervened and resisted the application on two separate grounds.

First, that a district court is precluded by Article 64 from granting a declaratory judgment of the nature sought. This objection, however, was overruled. The practice of the courts, founded upon the Privy Council decision in *Sasson* v. *Sasson*, [1924] A.C. 1007, has been to grant such a judgment, provided that the divorce is valid according to the relevant law.

The second objection was that no such declaration could be made in the circumstances, since by English law, which was the national law of the parties, no divorce is effective unless it is granted judicially in the country of domicile. The learned judge was not slow to remark that if this contention were to prevail no British subject domiciled in Palestine could obtain a divorce, except by Act of Parliament. A petition in Palestine is forbidden by Order-in-Council, and is impossible in England because of the Palestinian domicile. This preposterous result, however, is avoided if the non-judicial form of the divorce is recognised by English law on the ground that it is recognised as valid and effective by the law of the domicile. *Sasson* v. *Sasson* is not decisive on the point, for there the relevant Egyptian Order-in-Council, although it denied divorce jurisdiction to the consular court, contained the following proviso :—

> Provided that in all matters relating to marriage . . . the court shall, in the case of persons belonging to non-Christian communities, recognise and apply the religious law or custom of the person concerned.

The court was therefore statutorily bound to recognise as valid a divorce of two British subjects of the Jewish religion domiciled in Egypt which had been granted to them by the Grand Rabbinat according to Jewish rites. The Palestinian Order-in-Council, as we have seen, contains no such explicit provision. Thus the question in the instant case was whether the divorce by mutual consent was on general principles of private international law to be recognised as valid by English law. The difficulty, of course, was the *Hammersmith Marriage Case*, [1917] 1 K.B. 634, which is sometimes regarded as deciding that English law will not recognise the validity of a foreign divorce obtained extra-judicially, even though it has been obtained in the domicile of the parties. The learned judge, however, was able successfully to distinguish the ambiguous decision in that case, on the ground that the marriage

between the wife, domiciled in England, and the Mohammedan, domiciled in India, had been solemnised in England. According to the prevailing, though probably erroneous, opinion, the *lex loci celebrationis* indelibly attached a Christian character to the marriage, and thus brought into operation the rule that a monogamous marriage is not dissoluble by a polygamous method. This difficulty removed, the learned judge boldly, and in the present submission correctly, applied the general principle that the validity of an alteration of status is the sole concern of the lex domicilii. If the cause for divorce is exclusively governed by that law, why should the mode of divorce be subject to a different principle? It would be difficult, indeed, to deny the logic or the commonsense of the following passage from the judgment:

> 'In my view, where the parties, as in this case, are domiciled in Palestine, members of the officially recognised Jewish community in Palestine, married in Palestine according to Jewish religious rites and divorced in Palestine according to these same religious rites and in a manner acceptable and recognised not merely by the community to which they belong but by the law of the land in which they live, that divorce can and will properly be recognised as valid according to English law.'

It is submitted that the result would be the same even though the parties had not been married in Palestine. In fact, perhaps the one criticism that may be levelled against the learned judge is that he laid rather too much stress upon the place of marriage. In one passage he said:

> 'If a marriage, valid according to the country where it is effected, is good all the world over, I am quite unable to see any reason, whether in law or in fact, why the divorce, performed in the same country and valid according to the same law of that country—albeit though in the entire absence of a civil or canon law it is the religious law—should not equally be good all the world over. That proposition seems to me all the more unassailable when the parties concerned are domiciled in the country where the marriage and divorce takes place even though they may be nationals of a foreign country.'

According to the English doctrine a divorce cannot be considered valid merely because it is obtained in the *locus celebrationis* according to the *lex loci celebrationis*. The essential is that it should be valid according to the *lex domicilii*, as indeed it was in the instant case.

One startling fact that emerges is that Christians domiciled in Palestine, who are not Palestinian citizens, cannot obtain a divorce

anywhere. If, for instance, the parties are British subjects and members of the Church of England, they cannot resort either to the English court, since their domicile is not English, or to the Palestinian court, since the court has no direct divorce jurisdiction and there is no religious rule sufficient to justify a declaratory judgment such as was given in *Bialik* v. *Bialik*.

REVIEW OF CASES

NULLITY. JURISDICTION IN DIVORCE. RESPONDENT'S DOMICILE

de Reneville (otherwise Sheridan) v. *de Reneville*

The Facts.

The parties were married in 1935 in Paris. The husband, a Frenchman, was domiciled and resident in France; the wife, up to the date of the marriage, had been domiciled and resident in England. Between 1935 and 1940 the parties lived much of the time in French overseas possessions, where the husband was on official duty. In 1940 the wife returned to England, and lived there until the present petition. The husband had not visited her in this country since 1940. In 1946, the wife presented a petition for nullity on the ground that the marriage had not been consummated owing to the incapacity or the wilful refusal of the husband. The husband entered an appearance under protest.

The Judgment (Probate, Divorce and Admiralty Division, May 22, 1947).

Jones, J., said that it was admitted that the husband had always been domiciled in France and that it could not be disputed that the wife acquired her husband's domicile by her marriage. His Lordship referred to *Fowke* v. *Fowke*, [1938] Ch. 774, and to *Adams* v. *Adams*, [1941] 1 K.B. 536, in which the differences between void and voidable marriages were discussed. The marriage was still a subsisting marriage and the wife was not therefore domiciled within the jurisdiction of the court. It could not be argued that such was not the case because at some future time the marriage might be declared void.

The petitioner's second contention was that she was resident in England and that the court had jurisdiction on that ground. In suits for nullity the court followed the practice of the ecclesiastical courts, and the jurisdiction of those courts was based on residence. Until the decision in *White* v. *White*, [1937] P. 111, it appeared essential for both parties to be resident within the jurisdiction, but in that case it was held that the wife had never acquired the domicile of her husband and that the court had jurisdiction although the respondent was in Australia. That case had been followed in *Robert* v. *Robert* (1947), I.L.Q., Vol. 1, No. 2, p. 247. His Lordship

discussed *White* v. *White* and *Roberts* v. *Brennan*, [1902] P. 143, which was followed therein, and said that the present case could be distinguished as there were no special circumstances and the respondent had here made a protest to the jurisdiction. Nor was there any hardship here.

Held that the court had no jurisdiction to try the case.

[Reported in [1947] 2 All E.R. 22 and *Weekly Notes*, July 19, 1947, p. 202.]

DOMICILE. ENGLISH DOMICILE OF ORIGIN. ACQUISITION OF BELGIAN DOMICILE. DEATH IN ENGLAND. NO ABANDONMENT OF FOREIGN DOMICILE

Re Lloyd Evans, deceased

National Provincial Bank v. *Evans*

The Facts.

The present summons was taken out by the plaintiffs as trustees of the will of Lloyd Evans, who died in 1943, leaving property in England and Belgium, and raised various questions arising on the testator's will, made in English form in England in 1943, the principal one being what was the testator's domicile at the date of his death. He was born at Carmarthen in 1864, went to live in Java in 1880, and in 1888 married a lady of Dutch nationality. He left Java in 1917 and after spending some months in Australia and later in California, returned to England in 1920. In 1921, after a short stay in Holland, he went to live in Brussels, engaged in business there and purchased a residence, where he lived with his wife and three children. In May, 1940, the German army invaded Belgium, and he was persuaded by his son and the latter's wife to leave Brussels, and made his way to England through France, arriving in June, 1940. Between then and the date of his death in 1943 at the age of seventy-seven, he occupied three different furnished flats in London. There was evidence that he did not intend to stay in England, but proposed to travel to Australia or South Africa as soon as the war was over, and eventually to return to Brussels. Much of his estate in Belgium could not be traced or identified after his death. Proceedings to administer his estate had been commenced in Belgium by his son, Captain Evans, who contended that his domicile was Belgium. His two married daughters, who claimed under the will, contended that the testator abandoned his Belgian domicile.

The Judgment (Chancery Division, July 8, 9, 1947).

Wynn-Parry, J., said it was perfectly clear from the evidence that the testator had no intention of settling in England or remaining there longer than he needed. The evidence of his daughter, Mrs. McLean, and his secretary, was, that after the war the testator intended to go to and make his home in Australia. These, however, were interested witnesses, and an independent witness who had been employed in the testator's bank in Brussels and had been an intimate friend of the testator, said that the testator frequently talked of returning to Brussels, and discussed it with him and other friends whom he had known there, who all looked forward to going back there as soon as possible.

The relevant authorities on the question were *Udny* v. *Udny* (1869), L.R. 1 Sc. & Div.App. 441, *per* Lord Hatherley at p. 450, and Lord Westbury at p. 458, and *Re Marrett* (1887), 36 Ch.D. 400, *per* Cotton, L.J. at p. 407. If a man lost his domicile of choice then, without anything more, his domicile of origin revived, but to lose that domicile of choice he must have left it with the intention of leaving it permanently. Unless he had left it both *animo et facto* it remained. Here it was quite clear that the testator only left Brussels with reluctance and under the pressure of circumstances. Having got to the South of France he wanted to stay there if he could and from there he wrote to his notary a document indicating his intention to retain his Belgian domicile. The parties who contended for an English domicile had not discharged the onus of proof that the testator had definitely abandoned his Belgian domicile. The only difference in law between the two cases of acquiring and abandoning a domicile of choice, was that less evidence was required to prove the latter than the former. But in either event both the intention and the act must be demonstrated to be unequivocal. Here the act of the testator in leaving Brussels was entirely equivocal; it was not a free choice. A change of intention was not demonstrated by evidence which at its highest showed no more than that the testator expressed from time to time different views as to his future intentions to different people. Probably having regard to his age and associations the testator was often in two minds as to what he would do when the war ended. He held that the testator's domicile at the date of his death remained Belgian. The other questions raised by the summons must stand over until the result of the proceedings taken in Belgium was known.

[Reported in *Weekly Notes*, August 9, 1947, p. 235.]

CONFISCATORY DECREE. EXTRA TERRITORIAL EFFECTS

Frankfurter v. *W. L. Exner, Ltd.*

The Facts.

The plaintiff, a Jew, formerly carried on a leather business in Vienna. In 1933 the defendants, who are an English company dealing in leather goods, appointed the plaintiff as their agent in Austria, upon the terms that he was to receive a commission on all sales of the defendants' goods in Austria. Under the terms of this agreement the defendants from time to time sent goods to the plaintiff in Vienna, such goods remaining the property of the defendants until sold by the plaintiff. On March 10, 1938, the Germans invaded Austria, Austria was incorporated in the German Reich, and this incorporation was recognised by the British Foreign Office.

Shortly afterwards Jewish businesses in Austria were placed in the hands of officials known as Official Administrators by virtue of a Decree of April 13, 1938, section 2 of which provided as follows: 'The Official Administrator shall have full legal power to act on behalf of the undertaking. During the period of the administration the authority of the proprietor of the undertaking . . . to act on behalf of the undertaking shall be in abeyance'. One S. was appointed Official Administrator of the plaintiff's business in pursuance of this Decree and the plaintiff was arrested and imprisoned in May, 1938.

At that date goods of the defendants were stored with the plaintiff in Vienna on consignment, and the plaintiff had a credit balance on the defendants' books which amounted to some £2,250. On May 6, 1938, the plaintiff wrote to the defendants informing them that his business had been placed under the control of an Official Administrator and that no dealing by the defendants with the plaintiff's credit balance would be valid without the consent of S. The letter was signed by both the plaintiff and by S. Subsequently the defendants arranged with S. that he should sell their goods, then in Vienna on consignment. S. sold portions of these goods from time to time and notified the defendants of the sales, but did not remit any payment in respect of them. The defendants on receipt of these notices of sale debited the plaintiff's credit balance with the purchase price due to them. In this action in the Chancery Division the plaintiff claimed from the defendants the £2,250 which stood to his credit in May, 1938.

The Judgment (Chancery Division, June 23, 1947).

In giving judgment for the plaintiff, Mr. Justice Romer held: (1) That there was no evidence to support the defendants' contention

that the Official Administrator, S., had ever given directions for the allocation of the credit balance to pay for the sales by him of the consignment stock; (2) that even if S. had given such directions, this would not entitle the defendants to allocate the credit balance in such manner. It was contended for the defendants that having regard to His Majesty's recognition of the Hitler régime as the governing power in Austria, our courts should recognise the effect of the Decree, even if it was confiscatory in character. It was true that the Decree was of a confiscatory character and was not a penal decree in the sense laid down in *Huntingdon* v. *Attrill*, [1893] A.C. 150. But such confiscatory laws were regarded in our courts in the same light as penal laws. The general principle which our courts applied in relation to penal laws was stated by Lord Loughborough in *Folliott* v. *Ogden* (1789), 1 Hy.Bl. 123 at p. 135: 'The penal laws of foreign countries are strictly local and affect nothing more than they can reach and can be seized by virtue of their authority'. That principle was recognised in *Re Ferdinand, ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; in *Re Russian Bank for Foreign Trade*, [1933] Ch. 745; and recently in *Lorentzen* v. *Lydden & Co., Ltd.*, [1942] 2 K.B. 202. Our courts would accordingly recognise the title of S. to property in Austria acquired by virtue of the decree, even if such property was subsequently transferred to England: see *Aksionairnoye Obschestvo etc. A.M. Luther* v. *James Sagor & Co.*, [1921] 3 K.B. 532; *Princess Paley Olga* v. *Weisz and Others*, [1929] 1 K.B. 718; *Banco de Vizcaya* v. *Don Alfonso de Borbón y Austria*, [1935] 1 K.B. 140; but he would appeal in vain to our courts to assist him in establishing a claim to any property which had always been situate within the jurisdiction of the High Court in England.

[Reports: *The Weekly Notes*, July 26, 1947, p. 210; *The Law Times* July 12, 1947, p. 25.]

TREATY ABROGATION

[SUPREME COURT OF THE UNITED STATES]

Tom C. Clark (*Attorney-General*) *as Successor to the Alien Property Custodian* (*Petitioner*) v. *Alvina Allen*

The Facts.

Alvina Wagner, a resident of California, died in 1942, leaving real and personal property situate there. By will dated December 23, 1941, and admitted to probate in a California court in 1942, she bequeathed her entire estate to four relatives, who are nationals and

residents of Germany. Six heirs-at-law, residents of California, filed a petition for determination of heirship in the probate proceedings claiming that the German nationals were ineligible under the California law. This law limited the rights of non-resident aliens to succeed to California property to reciprocal rights to residents and citizens of the United States in corresponding circumstances.

No hearing was held on the petition. For in 1943 the Alien Property Custodian to whose functions the Attorney-General has recently succeeded, vested in himself all right, title and interest of the German nations in the estate of this decedent. He then instituted an action in the District Court against the executor under the will and the California heirs-at-law for a determination that they had no interest in the estate, and that he was entitled to the entire net estate, after payment of Administration and other expenses.

The District Court gave judgment for the Custodian on the pleadings (52 F.Supp. 850). The Circuit Court of Appeals reversed, holding that the District Court was without jurisdiction of the subject-matter (147 F. 2d B6). The Supreme Court on certiorari held that the District Court had jurisdiction and remanded the cause to the Circuit Court of Appeals for consideration on the merits (326 U.S. 490). The Circuit Court of Appeals held for respondents (156 F. 2d 633). The Supreme Court granted a second petition for a writ of certiorari which was granted because the issues are of national importance.

The Judgment (Supreme Court of the United States, June 9, 1947).

Article IV of the Treaty of Friendship, Commerce and Consular Rights with Germany, signed December 8, 1923, and proclaimed October 14, 1925, provided that non-resident aliens succeeding to real property by law or testamentary disposition are allowed a term of three years in which to sell, plus a right to withdraw the proceeds and an exemption from discriminatory taxation. Justice Douglas, speaking for the court, held that this provision extended to the German heirs of ' any person ' holding realty in the United States; that the treaty provisions, if not superseded or abrogated, prevail over any conflicting provision of California law. The Circuit Court concluded that the treaty provisions had been abrogated. It relied on the Trading with the Enemy Act, as amended by the First War Powers Act and the Treaty of Berlin. Justice Douglas premised the court's position on the principle that the outbreak of war does not necessarily abrogate treaty provisions. He indicated that the controlling consideration as to abrogation was the question whether a particular treaty provision is incompatible with the maintenance of a state of war. The court agreed that the national policy of the

Trading with the Enemy Act did not without more suspend or abrogate Article IV of the treaty. *Karnuth* v. *United States* was cited (279 U.S. 237) in support.

With regard to the argument based on the Treaty of Berlin, the court held it inconclusive. In this relation it commented on the shifting position of the State Department as reflected in the view of Secretary Lansing in 1918 and the different view today. With respect to the argument that the treaty of 1923 failed to survive the war since Germany ceased to exist as an independent national or international community, the court held that it was a political question on which the political departments had reached no determination. Accordingly, the German devisees and consequently the Alien Property Custodian were held unanimously entitled to the real property.

Reversed in part and affirmed in part and remanded for further proceedings in conformity with the opinion.

SUPREME COURT OF THE UNITED STATES

EXTENT OF TERRITORIAL WATERS—DEFINITION OF THE STATE'S RIGHTS OVER THE MARGINAL BELT AND THE BED OF THE OCEAN

United States of America (*Plaintiff*) v. *State of California*

Original

Mr. Justice Black delivered the opinion of the court (June 23, 1947).

The United States by its Attorney-General and Solicitor-General brought this suit against the State of California invoking our original jurisdiction under Article III, § 2, of the Constitution which provides that 'In all Cases . . . in which a State shall be a Party, the supreme Court shall have original Jurisdiction'. The complaint alleges that the United States 'is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low-water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California'. It is further alleged that California, acting pursuant to State statutes, but without authority from the United States, has negotiated and executed numerous leases with persons and corporations purporting to authorise them to enter upon the described ocean area to take petroleum, gas, and other mineral deposits, and

that the lessees have done so, paying to California large sums of money in rents and royalties for the petroleum products taken. The prayer is for a decree declaring the rights of the United States in the area as against California and enjoining California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States.

California has filed an answer to the complaint. It admits that persons holding leases from California, or those claiming under it, have been extracting petroleum products from the land under the three-mile ocean belt immediately adjacent to California. The basis of California's asserted ownership is that a belt extending three English miles from low-water mark lies within the original boundaries of the State (Cal. Const. Art. XII (1849))[1]; that the original thirteen States acquired from the Crown of England title to all lands within their boundaries under navigable waters, including a three-mile belt in adjacent seas; and that since California was admitted as a State on an 'equal footing' with the original States, California at that time became vested with title to all such lands. The answer further sets up several 'affirmative' defences. Among these are that California should be adjudged to have title under a doctrine of prescription; because of an alleged long-existing Congressional policy of acquiescence in California's asserted ownership; because of estoppel or laches; and, finally, by application of the rule of res judicata.[2]

After California's answer was filed, the United States moved for judgment as prayed for in the complaint on the ground that the purported defences were not sufficient in law. The legal issues thus raised have been exhaustively presented by counsel for the parties, both by brief and oral argument. Neither has suggested any necessity for the introduction of evidence, and we perceive no such necessity at this stage of the case. It is now ripe for determination of the basic legal issues presented by the motion. But before reaching the merits of these issues, we must first consider questions raised in California's brief and oral argument concerning the Government's right to an adjudication of its claim in this proceeding.

[1] The Government complaint claims an area extending three nautical miles from shore; the California boundary purports to extend three English miles. One nautical mile equals 1.15 English miles, so that there is a difference of .45 of an English mile between the boundary of the area claimed by the Government and the boundary of California. See Cal. Const., Art. XXI, § 1 (1879).

[2] The claim of res judicata rests on the following contention. The United States sued in ejectment for certain lands situated in San Francisco Bay. The defendant held the lands under a grant from California. This court decided that the State grant was valid because the land under the Bay had passed to the State upon its admission to the Union: *United States* v. *Mission Rock Co.*, 189 U.S. 391. There may be other reasons why the judgment in that case does not bar this litigation; but it is a sufficient reason that this case involves land under the open sea, and not land under the inland waters of San Francisco Bay.

First. It is contended that the pleadings present no case or controversy under Article III, § 2, of the Constitution. The contention rests in the first place on an argument that there is no case or controversy in a legal sense, but only a difference of opinion between Federal and State officials. It is true that there is a difference of opinion between Federal and State officers. But there is far more than that. The point of difference is as to who owns, or has paramount rights in and power over several thousand square miles of land under the ocean off the coast of California. The difference involves the conflicting claims of Federal and State officials as to which government, State or Federal, has a superior right to take or authorise the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be, taken by or under authority of the State. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action. The case principally relied upon by California, *United States* v. *West Virginia*, 295 U.S. 463, does not support its contention. For here there is a claim by the United States, admitted by California, that California has invaded the title or paramount right asserted by the United States to a large area of land and that California has converted to its own use oil which was extracted from that land. Cf. *United States* v. *West Virginia*, *supra*, 471. This alone would sufficiently establish the kind of concrete, actual conflict of which we have jurisdiction under Article III. The justiciability of this controversy rests therefore on conflicting claims of alleged invasions of interests in property and on conflicting claims of governmental powers to authorise its use. *United States* v. *Texas*, 143 U.S. 621, 646, 648; *United States* v. *Minnesota*, 270 U.S. 181, 194; *Nebraska* v. *Wyoming*, 325 U.S. 589, 608.

Nor can we sustain that phase of the State's contention as to the absence of a case or controversy resting on the argument that it is impossible to identify the subject-matter of the suit so as to render a proper decree. The land claimed by the Government, it is said, has not been sufficiently described in the complaint since the only shoreward boundary of some segments of the marginal belt is the line between that belt and the State's inland waters. And the Government includes in the term 'inland waters' ports, harbours, bays, rivers and lakes. Pointing out the numerous difficulties in fixing the point where these inland waters end and the marginal sea begins, the State argues that the pleadings are therefore wholly devoid of a basis for a definite decree, the kind of decree essential to disposition of a case like this. Therefore, California concludes,

all that is prayed for is an abstract declaration of rights concerning an unidentified three-mile belt, which could only be used as a basis for subsequent actions in which specific relief could be granted as to particular localities.

We may assume that location of the exact coastal line will involve many complexities and difficulties. But that does not make this any the less a justiciable controversy. Certainly demarcation of the boundary is not an impossibility. Despite difficulties this court has previously adjudicated controversies concerning submerged land boundaries. See *New Jersey* v. *Delaware*, 291 U.S. 361, 295 U.S. 694; *Borax, Ltd.* v. *Los Angeles*, 296 U.S. 10, 21–27; *Oklahoma* v. *Texas*, 256 U.S. 70, 602. And there is no reason why, after determining in general who owns the three-mile belt here involved, the court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary. *Oklahoma* v. *Texas*, 258 U.S. 574, 582. Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings. See, *e.g.*, *Oklahoma* v. *Texas*, 256 U.S. 608–609; 260 U.S. 606, 625; 261 U.S. 340. California's contention concerning the indefiniteness of the claim presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by Article III of the Constitution.

Second. It is contended that we should dismiss this action on the ground that the Attorney-General has not been granted power either to file or to maintain it. It is not denied that Congress has given a very broad authority to the Attorney-General to institute and conduct litigation in order to establish and safeguard Government rights and properties.[3] The argument is that Congress has for a long period of years acted in such a way as to manifest a clear policy to the effect that the States, not the Federal Government, have legal title to the land under the three-mile belt. Although Congress has not expressly declared such a policy, we are asked to imply it from certain conduct of Congress and other governmental agencies charged with responsibilities concerning the national domain. And, in effect, we are urged to infer that Congress has by implication amended its long-existing statutes which grant the Attorney-General broad powers to institute and maintain court proceedings in order to safeguard national interests.

An Act passed by Congress and signed by the President could, of course, limit the power previously granted the Attorney-General

[3] 5 U.S.C., §§ 291, 309; *United States* v. *San Jacinto Tin Co.*, 125 U.S. 273, 279, 284; *Kern River Co.* v. *United States*, 257 U.S. 147, 154–5; *Sanitary District* v. *United States*, 266 U.S. 405, 425–6; see also *Re Debs*, 158 U.S. 564, 584; *United States* v. *Oregon*, 295 U.S. 1, 24; *United States* v. *Wyoming*, 323 U.S. 669, 331 U.S. —.

to prosecute claims for the Government. For Article IV, § 3, cl. 2, of the Constitution vests in Congress 'Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States'. We have said that the constitutional power of Congress in this respect is without limitation. *United States* v. *San Francisco*, 310 U.S. 16, 29–30. Thus neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power.

But no Act of Congress has amended the statutes which impose on the Attorney-General the authority and the duty to protect the Government's interests through the courts. See *Re Cooper*, 143 U.S. 472, 502–503. That Congress twice failed to grant the Attorney-General specific authority to file suit against California,[4] is not a sufficient basis upon which to rest a restriction of the Attorney-General's statutory authority. And no more can we reach such a conclusion because both Houses of Congress passed a joint resolution quitclaiming to the adjacent States a three-mile belt of all land situated under the ocean beyond the low-water mark, except those which the Government had previously acquired by purchase, condemnation, or donation.[5] This joint resolution was vetoed by the President.[6] His veto was sustained.[7] Plainly, the resolution does not represent an exercise of the constitutional power of Congress to dispose of public property under Article IV, § 3, cl. 2.

Neither the matters to which we have specifically referred, nor any others relied on by California, afford support for a holding that Congress has either explicitly or by implication stripped the Attorney-General of his statutorily granted power to invoke our jurisdiction in this Federal-State controversy. This brings us to the merits of the case.

Third. The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those

[4] S. J. Res. 208, 75th Cong., 1st Sess. (1938); S. J. Res. 83 and 92, 76th Cong., 1st Sess. (1939). S. J. Res. 208 passed the Senate, 81 Cong. Rec. 9326 (1938), was favourably reported by the House Judiciary Committee, H. R. Rep. 2378, 75th Cong., 3d Sess. (1938), but was never acted on in the House. Hearings were held on S. J. Res. 83 and 92 before the Senate Committee on Public Lands and Surveys, but no further action was taken: *Hearings before the Senate Committee on Public Lands and Surveys on S. J. Res. 83 and 92*, 76th Cong., 1st Sess. (1939). In both hearings objections to the resolutions were repeatedly made on the ground that passage of the resolutions was unnecessary since the Attorney-General already had statutory authority to institute the proceedings. See *Hearings before the House Committee on the Judiciary on S. J. Res. 208*, 75th Cong., 3d Sess., 42–5, 59–61 (1938); *Hearings on S. J. Res. 83 and 92*, *supra*, 27–30.

[5] H. J. Res. 225, 79th Cong., 2d Sess. (1946); 92 Cong. Rec. 9642, 10316 (1946).

[6] 92 Cong. Rec. 10660 (1946).

[7] 92 Cong. Rec. 10745 (1946).

of a mere property owner. In one capacity it asserts the right and responsibility to exercise whatever power and dominion are necessary to protect this country against dangers to the security and tranquillity of its people incident to the fact that the United States is located immediately adjacent to the ocean. The Government also appears in its capacity as a member of the family of nations. In that capacity it is responsible for conducting United States relations with other nations. It asserts that proper exercise of these constitutional responsibilities requires that it have power, unencumbered by State commitments, always to determine what agreements will be made concerning the control and use of the marginal sea and the land under it. See *McCulloch* v. *Maryland*, 4 Wheat. 316, 403–408; *United States* v. *Minnesota*, 270 U.S. 181, 194. In the light of the foregoing, our question is whether the State or the Federal Government has the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited.

California claims that it owns the resources of the soil under the three-mile marginal belt as an incident to those elements of sovereignty which it exercises in that water area. The State points out that its original Constitution, adopted in 1849 before that State was admitted to the Union, included within the State's boundary the water area extending three English miles from the shore. Cal. Const. (1849) Art. XII, § 1; that the Enabling Act which admitted California to the Union ratified the territorial boundary thus defined; and that California was admitted 'on an equal footing with the original States in all respects whatever', 9 Stat. 452. With these premises admitted, California contends that its ownership follows from the rule originally announced in *Pollard's Lessee* v. *Hagan*, 3 How. 212; see also *Martin* v. *Waddell*, 16 Pet. 367, 410. In the *Pollard Case* it was held, in effect, that the original States owned in trust for their people the navigable tidewaters between high- and low-water mark within each State's boundaries, and the soil under them, as an inseparable attribute of State sovereignty. Consequently, it was decided that Alabama, because admitted into the Union on 'an equal footing' with the other States, had thereby become the owner of the tidelands within its boundaries. Thus the title of Alabama's tidelands grantee was sustained as valid against that of a claimant holding under a United States grant made subsequent to Alabama's admission as a State.

The Government does not deny that under the *Pollard* rule, as

explained in later cases,[8] California has a qualified ownership [9] of lands under inland navigable waters such as rivers, harbours, and even tidelands down to the low-water mark. It does question the validity of the rationale in the *Pollard Case* that ownership of such water areas, any more than ownership of uplands, is a necessary incident of the State sovereignty contemplated by the 'equal footing' clause. Cf. *United States* v. *Oregon*, 295 U.S. 1, 14. For this reason, among others, it argues that the *Pollard* rule should not be extended so as to apply to lands under the ocean. It stresses that the thirteen original colonies did not own the marginal belt; that the Federal Government did not seriously assert its increasingly greater rights in this area until after the formation of the Union; that it has not bestowed any of these rights upon the States, but has retained them as appurtenances of national sovereignty. And the Government insists that no previous case in this court has involved or decided conflicting claims of a State and the Federal Government to the three-mile belt in a way which requires our extension of the *Pollard* inland-water rule to the ocean area.

It would unduly prolong our opinion to discuss in detail the multitude of references to which the able briefs of the parties have cited us with reference to the evolution of powers over marginal seas exercised by adjacent countries. From all the wealth of material supplied, however, we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it,[10] even if they did acquire elements of the sovereignty of the English Crown by their revolution against it. Cf. *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 316.

At the time this country won its independence from England there was no settled international custom or understanding among nations that each nation owned a three-mile water belt along its

[8] See, *e.g.*, *Manchester* v. *Massachusetts*, 139 U.S. 240; *Louisiana* v. *Mississippi*, 202 U.S. 1; *The Abby Dodge*, 223 U.S. 166. See also *United States* v. *Mission Rock Co.*, 189 U.S. 391; *Borax, Ltd.* v. *Los Angeles*, 296 U.S. 10.

Although the *Pollard Case* has thus been generally approved many times, the case of *Shively* v. *Bowlby*, 152 U.S. 1, 47–8, 58, held, contrary to implications of the *Pollard* opinion, that the United States could lawfully dispose of tidelands while holding a future State's land 'in trust' as a territory.

[9] See *United States* v. *Commodore Park*, 324 U.S. 386, 390, 391; *Scranton* v. *Wheeler*, 179 U.S. 141, 159, 160, 163; *Stockton* v. *Baltimore & N.Y.R. Co.*, 32 F. 9, 20; see also *United States* v. *Chandler-Dunbar Co.*, 229 U.S. 53.

[10] A representative collection of official documents and scholarship on the subject is Crocker, *The Extent of the Marginal Sea* (1919). See also I. Azuni, *Maritime Law of Europe* (published 1806), c. 2; Fulton, *Sovereignty of the Sea* (1911); Masterson, *Jurisdiction in Marginal Seas* (1929); Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (1927); Fraser, 'The Extent and Delimitation of Territorial Waters', 11 Corn.L.Q. 455 (1926); Ireland, 'Marginal Seas Around the States', 2 La.L.Rev. 252, 436 (1940); Comment, 'Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf', 56 Yale L.J. 356 (1947).

borders. Some countries, notably England, Spain, and Portugal, had, from time to time made sweeping claims to a right of dominion over wide expanses of ocean. And controversies had arisen among nations about rights to fish in prescribed areas.[11] But when this nation was formed, the idea of a three-mile belt over which a littoral nation could exercise rights of ownership was but a nebulous suggestion.[12] Neither the English charters granted to this nation's settlers,[13] nor the treaty of peace with England,[14] nor any other document to which we have been referred, showed a purpose to set apart a three-mile ocean belt for colonial or State ownership.[15] Those who settled this country were interested in lands upon which to live, and waters upon which to fish and sail. There is no substantial support in history for the idea that they wanted or claimed a right to block off the ocean's bottom for private ownership and use in the extraction of its wealth.

It did happen that shortly after we became a nation our statesmen became interested in establishing national dominion over a definite marginal zone to protect our neutrality.[16] Largely as a result of their efforts, the idea of a definite three-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete dominion, has apparently at last been generally accepted throughout the world,[17] although as late as 1876 there was still considerable doubt in England about its scope and even its existence. See *The Queen* v. *Keyn*, L.R. 2 Ex.D. 63. That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. *Cunard*

[11] See, *e.g.*, Fulton, *op. cit.*, *supra*, 3–19, 144–5; Jessup, *op. cit.*, *supra*, 4.

[12] Fulton, *op. cit.*, *supra*, 21, says in fact that ' mainly through the action and practice of the United States of America and Great Britain since the end of the eighteenth century, the distance of three miles from shore was more or less formally adopted by most maritime States as . . . more definitely fixing the limits of their jurisdiction and rights for various purposes, and, in particular, for exclusive fishery '.

[13] Collected in Thorpe, *American Charters, Constitutions and Organic Laws* (1919).

[14] Treaty of 1783, 8 Stat. 80.

[15] The Continental Congress did, for example, authorise capture of neutral and even American ships carrying British goods, ' if found within three leagues (about nine miles) of the coasts ': Journ. of Cong. 185, 186, 187 (1781). Cf. Declaration of Panama of 1939, 1 Dept. of State Bull. 321 (1939), claiming the right of the American Republics to be free from a hostile act in a zone 300 miles from the American coasts.

[16] Secretary of State Jefferson in a note to the British minister in 1793 pointed to the nebulous character of a nation's assertions of territorial rights in the marginal belt, and put forward the first official American claim for a three-mile zone which has since won general international acceptance. Reprinted in H. Ex. Doc. No. 324, 42d Cong., 2d Sess. (1872), 553–4. See also Secretary Jefferson's note to the French minister, Genet, reprinted American State Papers, I Foreign Relations (1833), 183, 384; Act of June 5, 1794, 1 Stat. 381; 1 Kent, *Commentaries*, 14th ed., 33–40.

[17] See Jessup, *op. cit.*, *supra*, 66; ' Research in International Law ', 23 A.J.I.L. 249, 250 (Spec. Supp. 1929).

Steamship Co. v. *Mellon*, 262 U.S. 100, 122–124.[18] And this assertion of national dominion over the three-mile belt is binding upon this court. See *Jones* v. *United States*, 137 U.S. 202, 212–214; *Re Cooper*, 143 U.S. 472, 502–503.

Not only has acquisition, as it were, of the three-mile belt, been accomplished by the national Government, but protection and control of it has been and is a function of national external sovereignty. See *Jones* v. *United States*, 137 U.S. 202; *Re Cooper*, 143 U.S. 472, 502. The belief that local interests are so predominant as constitutionally to require State dominion over lands under its land-locked navigable waters finds some argument for its support. But such can hardly be said in favour of State control over any part of the ocean or the ocean's bottom. This country, throughout its existence has stood for freedom of the seas, a principle whose breach has precipitated wars among nations. The country's adoption of the three-mile belt is by no means incompatible with its traditional insistence upon freedom of the sea, at least so long as the national Government's power to exercise control consistently with whatever international undertakings or commitments it may see fit to assume in the national interest is unencumbered. See *Hines* v. *Davidowitz*, 312 U.S. 52, 62–64; *McCulloch* v. *Maryland*, *supra*. The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars raged on or too near its coasts. And in so far as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective

[18] See also *Church* v. *Hubbart*, 2 Cranch 187, 234. Congressional assertion of a territorial zone in the sea appears in statutes regulating seals, fishing, pollution of waters, etc.: 36 Stat. 325, 328; 43 Stat. 604, 605; 37 Stat. 499, 501. Under the National Prohibition Act, territory including 'a marginal belt of the sea extending from low-water mark outward a marine league, or three geographical miles' constituting 'the territorial waters of the United States' was regulated: 41 Stat. 305. Reprinted in 'Research in International Law', *supra*, 250. Anti-smuggling treaties in which foreign nations agreed to permit the United States to pursue smugglers beyond the three-mile limit contained express stipulations that generally the three-mile limit constitutes 'the proper limits of territorial waters'. See, *e.g.*, 43 Stat. 1761 (Pt. 2).

There are innumerable executive declarations to the world of our national claims to the three-mile belt, and more recently to the whole continental shelf. For references to diplomatic correspondence making these assertions, see 1 Moore, *International Law Digest* (1906) 705, 706, 707; 1 Wharton, *Digest of International Law* (1886) 100. See also Hughes, 'Recent Questions and Negotiations', 18 A.J.I.L. 229 (1924).

The latest and broadest claim is President Truman's recent proclamation that the United States 'regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control . . .': Exec. Proc. 2667, Sept. 28, 1945, 10 F.R. 12303.

belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it,[19] is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the States do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See *United States* v. *Belmont*, 301 U.S. 324, 331–332. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement.

The ocean, even its three-mile belt, is thus of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual State, so, if wars come, they must be fought by the nation. See *Chy Lung* v. *Freeman*, 92 U.S. 275, 279. The State is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks. Conceding that the State has been authorised to exercise local police power functions in the part of the marginal belt within its declared boundaries,[20] these do not detract from the Federal Government's paramount rights in and power over this area. Consequently, we are not persuaded to transplant the *Pollard* rule of ownership as an incident of State sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern. If this rationale of the *Pollard Case* is a valid basis for a conclusion that paramount rights run to the States in inland waters to the shoreward of the low-water mark, the same rationale leads to the conclusion that national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward in the three-mile belt. Cf. *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 316; *United States* v. *Causby*, 328 U.S. 256.

As previously stated this court has followed and reasserted the basic doctrine of the *Pollard Case* many times. And in doing so it has used language strong enough to indicate that the court then believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not. All of

[19] See *Lord* v. *Steamship Co.*, 102 U.S. 541, 544.

[20] See *Utah Power and Light Co.* v. *United States*, 243 U.S. 389, 404; cf. *The Abby Dodge*, 223 U.S. 166, with *Skiriotes* v. *Florida*, 313 U.S. 69, 74–5.

these statements were, however, merely paraphrases or offshoots of the *Pollard* inland-water rule, and were used, not as enunciation of a new ocean rule, but in explanation of the old inland-water principle. Notwithstanding the fact that none of these cases either involved or decided the State-Federal conflict presented here, we are urged to say that the language used and repeated in those cases forecloses the Government from the right to have this court decide that question now that it is squarely presented for the first time.

There are three such cases whose language probably lends more weight to California's argument than any others. The first is *Manchester* v. *Massachusetts*, 139 U.S. 240. That case involved only the power of Massachusetts to regulate fishing. Moreover, the illegal fishing charged was in Buzzards Bay, found to be within Massachusetts territory, and no question whatever was raised or decided as to title or paramount rights in the open sea. And the court specifically laid to one side any question as to the rights of the Federal Government to regulate fishing there. The second case, *Louisiana* v. *Mississippi*, 202 U.S. 1, 52, uses language about 'the sway of the riparian States' over 'maritime belts'. That was a case involving the boundary between Louisiana and Mississippi. It did not involve any dispute between the Federal and State Governments. And the court there specifically laid aside questions concerning 'the breadth of the maritime belt or the extent of the sway of the riparian States . . .'. *Ibid.* at 52. The third case is *The Abby Dodge*, 223 U.S. 166. That was an action against a ship landing sponges at a Florida port in violation of an Act of Congress, 34 Stat. 313, which made it unlawful to 'land' sponges taken under certain conditions from the waters of the Gulf of Mexico. This court construed the statute's prohibition as applying only to sponges outside the State's 'territorial limits' in the Gulf. It thus narrowed the scope of the statute because of a belief that the United States was without power to regulate the Florida traffic in sponges obtained from within Florida's territorial limits, presumably the three-mile belt. But the opinion in that case was concerned with the State's power to regulate and conserve within its territorial waters, not with its exercise of the right to use and deplete resources which might be of national and international importance. And there was no argument there, nor did this court decide, whether the Federal Government owned or had paramount rights in the soil under the Gulf waters. That this question remained undecided is evidenced by *Skiriotes* v. *Florida*, 313 U.S. 69, 75, where we had occasion to speak of Florida's power over sponge fishing in its territorial waters. Through Mr. Chief Justice Hughes we said: 'It is also clear that Florida has an interest in the proper maintenance of the sponge

fishery and that the [State] statute *so far as applied to conduct within the territorial waters of Florida, in the absence of conflicting federal legislation, is within the police power of the State'*. (Emphasis supplied.)

None of the foregoing cases, nor others which we have decided, are sufficient to require us to extend the *Pollard* inland-water rule so as to declare that California owns or has paramount rights in or power over the three-mile belt under the ocean. The question of who owned the bed of the sea only became of great potential importance at the beginning of this century when oil was discovered there.[21] As a consequence of this discovery, California passed an Act in 1921 authorising the granting of permits to California residents to prospect for oil and gas on blocks of land off its coast under the ocean. Cal. Stats. 1921, c. 303. This State statute, and others which followed it, together with the leasing practices under them, have precipitated this extremely important controversy, and pointedly raised this State-Federal conflict for the first time. Now that the question is here, we decide for the reasons we have stated that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the State has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.

Fourth. Nor can we agree with California that the Federal Government's paramount rights have been lost by reason of the conduct of its agents. The State sets up such a defence, arguing that by this conduct the Government is barred from enforcing its rights by reason of principles similar to laches, estoppel, adverse possession. It would serve no useful purpose to recite the incidents in detail upon which the State relies for these defences. Some of them are undoubtedly consistent with a belief on the part of some Government agents at the time that California owned all, or at least a part of the three-mile belt. This belief was indicated in the substantial number of instances in which the Government acquired title from the States to lands located in the belt; some decisions of the Department of Interior have denied applications for federal oil and gas leases in the California coastal belt on the ground that California owned the lands. Outside of court decisions following the *Pollard* rule, the foregoing are the types of conduct most nearly indicative of waiver upon which the State relies to show that the Government has lost its paramount rights in the belt. Assuming that Government agents could by conduct, short of a congressional surrender of title or interest, preclude the Government from asserting

[21] Bull. No. 321, Dept. of Interior, Geological Survey.

its legal rights, we cannot say it has done so here. As a matter of fact, the record plainly demonstrates that until the California oil issue began to be pressed in the thirties, neither the States nor the Government had reason to focus attention on the question of which of them owned or had paramount rights in or power over the three-mile belt. And even assuming that Government agencies have been negligent in failing to recognise or assert the claims of the Government at an earlier date, the great interests of the Government in this ocean area are not to be forfeited as a result. The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.[22]

We have not overlooked California's argument, buttressed by earnest briefs on behalf of other States, that improvements have been made along and near the shores at great expense to public and private agencies. And we note the Government's suggestion that the aggregate value of all these improvements are small in comparison with the tremendous value of the entire three-mile belt here in controversy. But, however this may be, we are faced with the issue as to whether state or nation has paramount rights in and power over this ocean belt, and that great national question is not dependent upon what expenses may have been incurred upon mistaken assumptions. Furthermore, we cannot know how many of these improvements are within and how many without the boundary of the marginal sea which can later be accurately defined. But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission. See *United States* v. *Texas*, 162 U.S. 1, 89, 90; *Lee Wilson & Co.* v. *United States*, 245 U.S. 24, 32.

We hold that the United States is entitled to the relief prayed for. The parties, or either of them, may, before September 15, 1947, submit the form of decree to carry this opinion into effect, failing

22 *United States* v. *San Francisco*, 310 U.S. 16, 31–2; *Utah* v. *United States*, 284 U.S. 534, 545, 546; *Lee Wilson & Co.* v. *United States*, 245 U.S. 24, 32; *Utah Power and Light Co.* v. *United States*, 243 U.S. 389, 409. See also *Secretary of State for India* v. *Chelikani Rama Rao*, L.R. 43 Ind.App. 192, 204 (1916).

which the court will prepare and enter an appropriate decree at the next term of court.

It is so ordered.

Mr. Justice Jackson took no part in the consideration or decision of this case, whilst Mr. Justice Reed and Mr. Justice Frankfurter delivered separate dissenting judgments.

[Reports No. 12 Original—October term, 1946.]

COURT OF APPEAL OF PARIS (FIRST HALL), JUDGMENT OF MAY 12, 1947

JURISDICTION IN DIVORCE. QUESTION OF FRENCH DOMICILE OF PETITIONER

Patino v. *Patino*

The Court, on the hearing of the appeal in due form by Antenor Patino, Bolivian national, against an order made on December 13, 1946, by the President of the Civil Tribunal of the Seine, declaring that court to have no jurisdiction in the matter of a petition for divorce brought by the appellant against his wife, April 16, 1946:

Whereas, the President of the Civil Tribunal of the Seine, as the grounds for that decision, relied on a declaration made by Patino on May 1, 1945, before the Supreme Court of the State of New York, according to which he intended ' to remain a national of Bolivia and have his domicile there for the rest of his life ':

Whereas, in accordance with the rule whereby French courts in principle have no jurisdiction to hear a petition of divorce between foreign parties, except where the defendant husband has a de facto domicile in France and has retained no fixed domicile in a foreign country where the petition might properly be brought, the President of the Civil Tribunal of the Seine was logically bound to dismiss the petition with liberty to appeal to a higher court, having first ascertained that Patino's only evidence of his domicile in Paris consisted of affidavits by his secretary and hall porter, and that, moreover, he had himself admitted his domicile to be in Bolivia:

But whereas, on appeal, Patino had produced new documents; and, to assess correctly their importance with regard to the competence of the French courts in the matter, the facts of the case must be looked at as they stood at the date of the original petition for divorce, namely, April 16, 1946, bearing in mind the three following principles: (1) that a married woman has no other domicile than that of her husband so long as the marriage is not legally dissolved, and this as much at Bolivian law as at French law; (2) that by matrimonial domicile must be understood any

residence of the husband where the wife has a right to live, sufficiently permanent in character and offering a minimum of comfort having regard to the position in life of the parties, provided the husband has no other domicile; (3) that the intention of selecting a domicile in any given place or a mere declaration of residing there, even when expressed in a notarial act cannot by itself effect a change or acquisition of domicile, unless followed or accompanied by the actual taking up of residence in the place where domicile is declared to be:

Now, whereas from the fresh evidence available, it is clear that on April 16, 1946, Patino owned no premises or house in Bolivia where he could receive his wife and instal his family; that he himself had never stayed in that country for more than short periods, and that neither his wife nor his children had ever been there; that it is therefore of small importance that he had declared, one year earlier, on May 1, 1945, that he intended 'to remain a national of Bolivia and have his domicile there for the rest of his life'; that at no moment did he in fact have a Bolivian domicile:

Whereas, during the war years, and particularly from 1940 to 1942, Monsieur and Madame Patino lived in New York, but according to his official papers, issuing from the American authorities themselves, Patino was always considered as being only temporarily in New York, for which reason he was considered exempt from American income tax; that in New York he lived in hotels, that he owns no premises or residence there, nor has he any private interests or fixed installation which could give grounds for maintaining that his intention was to become domiciled there:

Whereas, on the contrary, his domicile might be held to have been in London in May, 1938, at which time Patino was Minister Plenipotentiary of Bolivia there; but that Patino ceased to hold diplomatic office on June 27, 1945, thus losing the legal domicile that he acquired through the exercise of his profession:

Whereas it is known that Patino studied in France, where his parents were domiciled before 1913; that after their marriage Monsieur and Madame Patino remained in Paris, where their two children were born; that they acquired a luxuriously furnished house at 9 Rue d'Audigné, which they made their principal establishment, whither they returned after each of their stays abroad; that having left Paris with his family because of the war and gone to New York, Patino never ceased to keep up his house in Paris, to which he returned to live after the liberation of France; that he has been held assessable to French income tax since 1937 and also to be liable to direct taxation under Article 114 of the general Code as a foreigner resident in France; that he gives evidence of having made

the requisite declaration in Paris in respect of solidarity tax and of having made the first two payments within the required limits of time; that from all these considerations the conclusion must be drawn that the married domicile of the Patinos is in fact in Paris, and that, failing production of proof of other domicile by Madame Patino, the Civil Tribunal of the Seine must be held to have jurisdiction,

Allows the appeal, and declares the Civil Tribunal of the Seine competent to hear the petition.

BOOK REVIEWS

Private International Law. Third Edition. By G. C. Cheshire. [Oxford : Clarendon Press. 1947. 884 pp. 35s.]

This classic work has already contributed much to the realisation of its author's ideal, the rational and elegant development of the law. Since the publication of the second edition in 1938, he has become Vinerian Professor of English law at Oxford, and now that this chair is occupied by one who confesses to the fascination of private international law, we may look forward to its further progressive development.

The third edition brings many changes, but the lucid thought and lapidary style which made the earlier editions models of English legal writing remain; and the most useful task a review can perform is to describe the changes briefly. Not quite 200 pages have been added and about 150 new cases are listed.

There is a brief exposition of the local law theory of W. W. Cook, an American writer, to whose *Logical and Legal Bases of Conflict of Laws* (Harvard University Press, 1942), Professor Cheshire refers several times and with approval. Cook contends that in a private international law case the court recognises and enforces only a right created by its own law, but for reasons of social expedience and practical convenience it fashions such a right as nearly as possible upon the law of the country in which the decisive facts have occurred. 'The English lawyer', Professor Cheshire comments, 'cannot but agree, at least in principle, with the teaching of Cook. His instinct is to test a proposed rule by its practical bearing upon normal human activities and expectations. It is by this method that in his opinion the purpose of law, which at bottom is to promote justice and convenience, can best be furthered. He is nothing if not an empiricist and pragmatist. This is the spirit in which the rules for the choice of law are conceived. There is no sacred principle which pervades all decisions, but when the circumstances indicate that the internal law of a foreign country will provide a solution more just, more convenient and more in accord with the expectations of the parties than the internal law of England, the English judge does not hesitate to give effect to the foreign rules'.

In considering the effects of foreign confiscatory legislation we come into the border country between public and private international law. Professor Cheshire states that the question whether the general principle that a foreign sovereign cannot be recognised as able to legislate effectively for things outside his jurisdiction

must be applied in cases where property, the subject of a confiscatory decree, is situated in England at the time of its promulgation, depends upon ' whether the previous owner or the sovereign is in possession of the property at the time when the proceedings are taken to test the disputed ownership. . . . If the previous owner is in possession, his legal ownership is, in the view of English law, unaffected by the confiscatory legislation of a foreign sovereign. . . . ' If property is in England at the time of the proceedings, and if at that time it is in the possession of the foreign confiscating sovereign, it cannot be recovered by its former owner since to allow him to do so would be to allow him to implead a sovereign power '. This discussion of the effect of foreign confiscatory laws might, it is submitted, have been assisted by examination of the various forms taken by what is loosely described as ' nationalisation '. Professor Cheshire avoids this term and uses two : ' confiscation ' and ' requisition or expropriation '. The present practice in many countries suggests that these are hardly sufficient and that the following forms of nationalisation by decree may be distinguished : —

(1) Confiscation, or forced transfer of ownership to the State, without compensation. Property may thus be confiscated as penalty for, *e.g.*, collaboration with the enemy, or under national policy, *e.g.*, the creation of a State shipping organisation;

(2) Confiscation with fair compensation;

(3) Expropriation, or forced transfer of ownership to other individuals, as in the breaking up of large estates or the transfer of shares in a ship to the master and crew;

(4) Requisition, or forced transfer of possession for public use.

It is submitted that none of these forms of nationalisation is strictly penal except certain examples of (1), and that the exclusion of the foreign law embodying them cannot rest, as suggested by Scott, L.J., and Atkinson, J., cited on p. 180 and p. 184 respectively, upon their penal nature, but upon the grounds set out in the passages quoted above. Even in the cases where the confiscatory decree is undoubtedly penal it may often be possible to exclude its operation upon those grounds also.

In the second edition, Professor Cheshire did not wholly distinguish between the residence of a corporation and what he called its quasi domicile. Its residence or quasi domicile was in that place where the central control or management of the corporation was conducted, and might be multiple, being located in any country where real business was carried on. A much more thorough analysis in the present edition has led to clarification and a complete revision of this opinion. In the situation and status of a corporation four elements are distinguished. First, residence for purposes of income tax liability and of the determination of its commercial domicile, is ' where the central management and control actually

abide' (language of Lord Loreburn in *De Beers Consolidated Mines, Ltd.* v. *Howe*); second, presence within the jurisdiction, arising where any business of the corporation is transacted in England by an agent operating at a fixed place of business for a definite period of time; third, domicile, which in the case of a corporation, is unchangeable and is the country under the law of which it is incorporated; fourth, nationality, which again follows that of the country of incorporation.

The 'indigenous proper law' of a contract is a new term introduced to distinguish the law, with which a contract is inherently connected and to which the parties are presumed to have intended to submit themselves, from the law called 'proper law' which has been expressly chosen by the parties to govern the contract. The advantages of complete freedom of choice of law by the parties is discussed, but Lord Wright's observations in *Vita Food Products, Inc.* v. *Unus Shipping Co. Ltd.*, [1939] A.C. 277, suggest that this freedom is subject to limitations: 'But when the English rule that intention is the test applies, and when there is an express statement by the parties of their intention to select the law of the contract, it is difficult to see what qualifications are possible, provided the intention expressed is bona fide and legal, and provided there is no reason for avoiding the choice on the ground of public policy'. Professor Cheshire finds, not unreasonably, that these words 'increase rather than elucidate the difficulties', but he concludes that the limitations upon the freedom of choice are three in number. A contract, though valid by its proper law, will not be enforced by an English court if, first, it is contrary to English public policy, or secondly, it offends against the public policy underlying its indigenous proper law; or thirdly, it is illegal by its indigenous proper law. This section ends with discussion of Gold clauses.

To the question of where a tort must be deemed to have been committed when some facts occurred in one country and some in another, Professor Cheshire invokes three possible theoretical answers: The place of the act from which the harm ensues; the country in which the harm ensues; the country in which the law is most favourable to the person wronged. The only English decision on the point, *Monro, Ltd.* v. *American Chemical Corporation*, [1944] 1 K.B. 432, turned on whether leave should be granted to the plaintiffs, under Order XI, r. I (ee), to serve notice of the writ upon the defendants in New York. The Court of Appeal held that no tort had been committed in England within the meaning of the rule, du Parcq, L.J., adopting the first theory in express words and Goddard, L.J., reaching the same conclusion by a distinction between the cause of action, 'the wrongful act or default of the defendant' which was committed in America and not in this country, and the right of action, which depends on 'the happening of damage to the plaintiff'. Professor Cheshire

criticises this distinction on the ground that 'a person has no right of action unless he has a cause of action, but if he has a cause of action there is nothing that impedes his right to bring the action, except . . . some such extraneous fact as lapse of time under the Limitation Act. Since cause of action comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment, nothing else than the sum total of these facts can be described as a wrongful act. . . . The plaintiff must prove duty, breach and damage. Once he proves these, and not before, the act of the defendant becomes a wrongful act and therefore it constitutes a cause of action which in turn produces a right of action'. He argues that according to the principles of English law 'If of three facts necessary to give a cause of action only two have occurred, there is a tort in embryo, but not a complete tort. The third fact has still to occur, and it would seem that the place in which its occurrence completes the tort constitutes the locus delicti'. This criticism seems to be open to the objection that it does not distinguish the physical act from its legal consequence. The sale of the substance by the defendants was a single physical act or a connected series of physical acts done in New York; upon the completion of the sale and shipment no further acts were performed by the defendants. A farmer suffered damage in England. The defendants owed a duty to the plaintiffs such that the act or acts in New York, by reason of their physical consequence, constituted a breach of that duty; the legal consequence of that breach of duty was that the defendants became liable in tort. To argue that the tort is committed in the place where the consequence of events is first completed so as to create a cause of action seems to confuse the physical with the legal consequences. Only if the physical acts of the defendants were themselves committed partly in one jurisdiction and partly in another would a difficulty as to where the tort was committed arise. The question surely is not, where was the tortious act committed, but where was the act of commission or omission by the defendant completed, which resulted in damage to the plaintiff so as to give him a cause of action. It is submitted that this reasoning underlay the observations of Goddard, L.J., though he obscured it by describing the physical act of the defendant as itself a wrongful act or default.

The chapters on Husband and Wife and Legitimacy and Legitimation have been largely rewritten. The recent decisions on annulment of marriage are reviewed with damaging criticism, which leads to the conclusion that only legislation can bring order into the present confusion of the law: 'An impartial review of the manner in which English private international law has handled the general topic of nullity of marriage cannot but induce somewhat melancholy reflections. There is no natural or essential difference between a suit to annul a voidable marriage and a suit for divorce, and it can scarcely be denied that the reasons advanced

for granting annulment rather than dissolution are historical and anachronistic. Nevertheless, the decisions must be taken as they stand until the Legislature intervenes. When this occurs and a solution is attempted by Parliament or by convention, the sound policy will be to abolish the difficult and obscure distinction between void and voidable marriages, together with the doctrine of relation-back, to admit an extension of the bases of jurisdiction, but to ensure that whatever court may hear the case the correct system of law shall be applied'. Of particular interest is the discussion of the exceptions to the principle that the formalities of marriage are governed by the lex loci celebrationis: These are (1) Marriages under the Foreign Marriage Act, 1892, now amended by the Foreign Marriage Act, 1947, which, inter alia, recasts in a modern and more precise form the provisions for 'marriage within the lines' under section 22; and (2) marriages where there is no local law available. Under this rubric Professor Cheshire discusses *Wolfenden* v. *Wolfenden*, [1945] P. 61,[1] the latest authority on the form of marriage valid at common law. The rule of common law that British subjects who settled in a colonial territory carried so much of English law with them as was applicable to their situation and condition, was available to Lord Merriman in this case to exclude the rule in *R.* v. *Millis*, which would have required the presence of an episcopally ordained priest, because the marriage took place in China during the capitulatory régime and the Crown had quasi-colonial jurisdiction—to use Lord Merriman's phrase—over British subjects. But what is the position where this rule of British constitutional law is not available? Suppose the parties go through a form of marriage *per verba de præsenti* in the presence of witnesses in Tibet. It cannot be said that they have carried English law with them into Tibet, for they are not settlors nor are they under the jurisdiction of the Crown so as to be governed by English law. Is it not arguable that a simple principle underlies all marriages of this kind, namely, that where no local form of marriage is available, then English law calls for no particular formalities, but requires only evidence of the marriage; in order that this statement may not appear to beg the question whether there has been a marriage it might be put in this way: Where the parties, being of full capacity, have taken each other for man and wife in the English sense in a country where there is no appropriate local form of marriage available, and can prove that they have done so, then they will be deemed to have been validly married at common law. In other words the rule of common law under which the marriage is valid is a rule of private international law for the recognition of the validity of foreign marriages.

The interesting problems of legitimation by recognition is discussed in connection with *Re Luck*, [1940] Ch. 864. Under the

[1] See *International Law Quarterly*, Vol. 1, p. 71.

Chinese civil code there is a system of legitimation which is analogous. In effect the natural father of a child may, even though he is married at the time of the child's birth to a woman other than the mother, recognise the child as his and thereby legitimate him as from birth. Since the Legitimacy Act, 1926, s. 2, only relates to the provisions of the Act in forbidding legitimation of an illegitimate child, one of whose parents was married at the time of his birth, this provision in the Chinese civil code has the odd consequence that where the father is a British subject domiciled in China and legitimates his child by recognition, that child becomes a British subject by birth.

There is a beautifully clear account of assignment, inter vivos of Choses in Possession; and also new paragraphs on revocation of wills and the meaning of lex situs. Of the latter, Professor Cheshire says, 'Most decisions and most writers have persisted upon the assumption that it means the relevant rule applicable at the situs to a purely domestic situation. . . . Assumption, however, is scarcely warranted. This, as we have seen in considering the renvoi doctrine, is one of those exceptional cases in which the court of the forum refers to the whole law of the foreign situs. . . . The relevant rule should be examined in the light of its recent purposes which it is designed to effect, and the policy upon which it is based, in order to ascertain whether it is properly applicable to a case containing a foreign element'.

The index, that Achilles' Heel of so many books, has been much improved in this new edition.

J. E. S. Fawcett.

Handbook of International Organizations in the Americas. By Ruth D. Masters. [Washington: Carnegie Endowment for International Peace, Division of International Law. 1945. xvi and 453 pp.]

This important work of reference is the result of investigations over a number of years by the Carnegie Endowment's Division of international law into the numerous subsidiary inter-American Congresses and Commissions which have become so significant a feature of the co-operative system known as Pan-Americanism. Dr. Masters has assembled and edited all the data in a handy volume, together with a short prefatory note and an index of the organisations described in this handbook. In all 109 international organisations which have their headquarters in the Western Hemisphere are included in this description, of which the great majority, eighty-two, are strictly inter-American, the remainder being organisations (many of them of wartime origin), on which non-American countries are also represented. Information is provided under the following headings: History, Purpose and

Functions, Voting, Finances, Languages, Publications and Work Done, and it is brought up to late summer 1943, and in some cases, up to October or November, 1944. Temporary and ad hoc bodies and organisations with purely national membership have been excluded.

As Dr. Masters points out, ' the general practice in the Western Hemisphere has been to place international governmental agencies under the administration of committees, councils or boards on which all member countries are represented '. This handbook, therefore, which includes bibliographical notes, will provide an indispensable guide to anyone who wishes to study American experience of the functioning of international institutions.

L. B. S.

Cobbett's Cases on International Law. Vol. I: Peace. Sixth Edition. By W. L. Walker, m.a., ll.b. [Sweet & Maxwell. 1947. 416 pp. £1 17s. 6d.]

The last edition of this well-known work (by Dr. Temple Gray) appeared in 1931, and considerable additions, including some twenty new cases, were necessary to bring it up to date. Pitt Cobbett had relied almost entirely on English and American cases, since decisions of the courts of Continental Europe were not at that time available to the author in large numbers. The notes to the present edition add a number of references to such decisions. As Mr. Walker points out, Pitt Cobbett's work was designed as a ' useful companion volume to existing textbooks ', and consisted, not of law reports, but of summaries of facts and decisions, to which were appended the comments of the author. The fifth edition had printed the author's comments in bolder type than the rest, emphasising the textbook element in the work. The present edition, however, reverts to the earlier form, and offers an extremely handy work of reference to the leading cases.

E. H. W.

La Garantie Internationale des Droits de l'Homme d'après la Charte de San-Francisco. By René Brunet. [Geneva: Grasset. 383 pp. Fr.10.50.]

There are two main stumbling blocks in the path of devising an effective system for the international protection of human rights. The first is the fact that there exists a fundamental difference of political and legal outlook on the subject between Russia and the States under her influence on the one hand, and most of the rest of the world on the other. Outside the Slav world, legal systems

have usually recognised that individuals have certain rights, whether deriving from natural law or from a notional primeval contract, which must be protected against encroachment by the State. In Russian legal outlook, it is not the individual who is protected but the class which is believed to be dominant or the groups which compose that class. This is probably not peculiar to Soviet outlook. For example, an analysis of Russian legal theory made over a hundred years ago, which is quoted by Herzen, reached a not dissimilar conclusion on the position of the individual in Russian law throughout history. But historical materialism which does not recognise any individuality separately from environment, has consolidated this outlook. All—or none. Individuals can only be free when the class which they compose has been freed. Such is the Russian faith. In no other way can, or should, the individual be protected.

The second stumbling block is to be found in the fact that the endeavour to extend to the individual the protection of an international law comes up sharply against the resolute unwillingness of States to permit the control by international organs of the way in which they treat their own nationals. Unlike the first obstacle, this is not confined to the Slav States. They are, however, particularly emphatic in their objections because, in their view, any majority action by the international community is bound to be hostile to the minority of socialist States.

Those who turn to Professor Brunet's study for a solution of these problems will look in vain. Professor Brunet is fully alive to those aspects of the Soviet Constitution which make the impressive list of freedoms apparently guaranteed by it often worth little in practice, and his analysis in Chapter 2 of this part of that document is of value. But he falls into the fundamental error—fundamental because the whole structure of any attempt to protect human rights by international agreement will founder on it—of concluding, as others have done before him,[1] that the Soviet system is 'essentially transitory' and that 'with the achievement of the first phase of the revolution a greater political, religious and spiritual liberty will be progressively accorded to individuals' (p. 362).

As regards national sovereignty as an obstacle to the international protection of human rights, M. Brunet is fully alive to this. Indeed, his whole study may be regarded as an argument for its abolition, or at any rate supersession to a large extent by the organs of the United Nations so far as human rights are concerned. The willingness of States to make this surrender—which the most optimistic could hardly regard as probable at the moment—is the underlying hypothesis of much of his book, which therefore appears to bear a somewhat academic character. However,

[1] *E.g.*, H. Lauterpacht, *An International Bill of the Rights of Man*, p. 15, n. 14.

M. Brunet's optimism is not confined to the future. In reading parts of his book one cannot escape the conclusion that he has allowed it to colour his interpretation of the meaning of the Charter.

M. Brunet is, however, fully alive to the inadequacy of the provisions of the Charter. He sees the solution in the adoption of an International Bill of the Rights of Man and in the acceptance of provisions for its enforcement. He devotes a chapter to the discussion of what this bill should contain, which should prove a useful contribution to the many drafts which are now being mustered for the final draft which the General Assembly is to cosider next year. Those responsible for submitting drafts would do well to heed M. Brunet's warning that 'it is better to have a few rights soundly guaranteed than many rights devoid of guarantee' (p. 266).

How should the Bill be enforced? M. Brunet, who has jettisoned national sovereignty, has devised a comprehensive system resting on four pillars:

1. Internal guarantees, whereby the provisions of the Bill become a part of the fundamental law of each country.
2. Technical guarantees, through an independent Commission of Human Rights, with executive powers.
3. Judicial guarantees, through an international court of human rights.
4. Penal guarantees, through the operation of an international criminal law.

Those who, unlike Professor Brunet, are unable to foresee any immediate prospect of the withering away of national sovereignty will probably reject as totally impracticable and visionary the last two methods. Professor Lauterpacht has, indeed, forcibly stated the objections to an international court of human rights: 'The municipal law of States cannot be administered by International courts possessing no requisite knowledge of the law, of the legal tradition and of the social and economic problems of the individual States'.[2]

M. Brunet's reply that in dealing with questions of the violation of human rights an international court is really interpreting international law is not entirely convincing. In effect such a court could not avoid, in investigating an individual's complaint against his government, an investigation into the actions of that government within the framework of its own municipal system. On the other hand, it is hard to dispute that the existing international court could perform a valuable function in advising the United Nations Organs on the extent and nature of international obligations so far as human rights are concerned.

However, enforcement there must be. Without it the adoption

[2] *Op. cit.*, p. 175.

of an international bill of rights may well prove a retrograde step, even in relation to the present vague protection sketched in the Charter of the United Nations. One way, as M. Brunet urges, is that the International Bill must be made a part of the municipal law of each signatory, so that the individual has thereby conferred upon him a right by international law, enforceable against his own State. This is eminently desirable, but it is well to bear in mind that there are serious constitutional difficulties, some of which are discussed in this work, and not only in, *e.g.*, the U.S.S.R., but also in Britain—as the recent British Draft International Bill of Human Rights recognises.[3] There remains therefore the technical guarantee, the Commission of Human Rights.

M. Brunet has drawn on the past experience of the League of Nations in dealing with mandates and minorities, and is emphatic about two points: the Commission must be as independent as possible, *i.e.*, it must consist of experts rather than of government nominees; and its activities must extend impartially to all States. To this may be added a third condition: it is more important that it should be absolutely free in its discussions and, if possible, investigations, than that it should have any executive powers. Publicity even without power to act is the beginning of an informed public international opinion, which alone can hold out some hope of a change for the better in national conduct.

The value of M. Brunet's study is that it demonstrates by its very optimism and bold hypothesis that a complete system of the international protection of human rights is really only possible within the framework of an international society with recognised authority over the States composing it. Such a society does not exist—however much international discussions seem at times to pretend that it does. In such a condition of things, overambition is, if anything, dangerous. In face of all the difficulties the only possible solution seems to make a humble start, but one built on firm foundations. Such a start would not seem possible without two conditions: an international bill of rights limited to the barest minimum and an international organ operating equally with respect to all States, large and small, with powers of discussion and investigation which will at least reveal whether these minimum rights are being respected.

L. B. Schapiro.

La Communitâ Internazionale. [Roma : Edizioni Italiane. 1946. Price Italian lire 1,000 annually.]

This is a new quarterly review published by the Società Italiana per l'Organizzazione Internazionale (Italian Association for International Organisation). The foreword states that the Association

[3] See Article 2 of Part 1 of Annex I, and comment thereon.

and its Review aim at promoting an organisation capable of providing a solid legal and political foundation for international relations so as to further international peace and security.

The contents of the first volume (1946) show that this commendable purpose is being pursued with zeal and in a spirit of impartiality and realism, free from party politics.

Dr. Roberto Ago, the Secretary General of the Association, opens the volume with an article 'L'Organizzazione Internazionale dalla Società delle Nazioni alle Nazioni unite' (International Organisation from the League of Nations to the United Nations). He shows that the League of Nations was neither a Superstate nor a Confederation but a mere continuation of the system of diplomatic conferences which had been known for more than a century past, the only improvements being a greater regularity of meetings, the institution of certain permanent agencies and the acceptance by the members of some duties in relation to such agencies. He goes on to say that, unfortunately, the United Nations are in no better position. New agencies have been added to those previously existing and some effort has been made to endow UNO with military powers to prevent a breakdown such as the League of Nations suffered by reason of its lack of power. But the military forces are to be provided by the Member States and they are actually their forces so that it is easy to foresee that the scheme will not work unless the Great Powers are in agreement, when no military forces will be needed at all.

In a short article 'Superamento dello Stato Nazionale e della Sovranità Statale', *Filippo Vassalli* states that the National State and the doctrine of State sovereignty are both being superseded and that in addition the importance in world affairs of Europe is steadily receding. He points out that the only real Great Powers left are at present the British Commonwealth, the United States of America and the Federation of Soviet Republics. All of them comprise more than one nation. The U.S.A. are not a European Power at all and the two others have many extra-European interests. As compared with these big three the importance of the smaller States, many of which are still national States, is greatly reduced and their sovereignty is a mere legal formula without much practical importance. Vassalli refers to speeches by Mr. Bevin and Mr. Eden on the transformation which the doctrine of State sovereignty is undergoing to make it possible for the people of the world to unite in a spirit of solidarity, thereby eliminating the causes of conflicts. Without putting his aim as high as this, Vassalli expresses the opinion that mere national communities are no longer capable of acting as the bearers of sovereignty although he is of course far from desiring to sacrifice the high values which they still represent. Presumably this means that the proper province of national

activity should be cultural, whereas matters of general policy, including economic policy, should be transferred to larger units. This appears to be a sound principle and it is borne out by Vassalli's pertinent remark that other human groupings such as the family, the tribe, the gens, the municipalities and others have all had their time, but were superseded as political units in the course of history and that today nobody would dream of deploring this.

Norberto Bobbio writes on federalist tendencies in Britain and America. He reviews Mr. D. N. Pritt's 'Federal Illusion' which opposes federalism, and pro-federalist writings of G. K. Streit, R. W. G. Mackay, G. S. Hoyland, Ely Culbertson, and others. He finds them all very interesting but observes that they are rather academic and lack the necessary driving force. Bobbio does not express any concluded opinion of his own, but observes that before any federalistic scheme can be carried into effect it is necessary to solve two preliminary problems: Firstly, is federation to embrace the whole world or certain countries only? Secondly, which of their sovereign rights are the Member Countries to surrender to the Federation?

Much more difficult is the problem of territorial limits. Bobbio puts it very neatly when he says that universal federation will probably not work in practice, whereas partial federation is likely to lead to the formation of opposing blocks involving the danger of war between them. This may be true, but it does not follow that the idea of federation should be dropped altogether.

Rodolfo De Nova, writing on Neutrality and the United Nations, considers the question whether membership of the United Nations is compatible with permanent neutrality such as Switzerland has been enjoying since 1815. He concludes that it is not compatible. Although the Security Council may in certain circumstances allow a member country to remain neutral, there is no power in the Council to exempt a member country once and for all from the duties which the Charter of UNO imposes on all member countries in the event of a war being waged against one of them.

Professor Balladore-Pallieri writes on amendments of the Charter of UNO and of the Statute of the International Court. He considers the requirements for such amendments and the procedure to be followed and points out that both the Charter and the Statute may be amended by a majority decision. He regards this as an important innovation involving a curtailment of sovereignty, because hitherto it had always been held that an international Treaty such as the Charter could be amended only by the unanimous consent of all contracting parties, the only precedent of a majority decision being the provision contained in Article 422 of the Versailles Treaty in respect of amendments to the constitution of the International Labour Organisation.

Piero Ziccardi discusses the internationalisation of internal waterways and points out that the problem is now affected by the formation of regional groups which to a certain extent are superseding the sovereignty of the smaller countries belonging to the group. As a result of this development certain waterways, in particular the middle and lower Danube, will no longer be truly international, being entirely within the regional system adhering to the Russian group. Ziccardi suggests, therefore, that internationalisation as previously understood would now be appropriate only where a waterway runs through, or divides, two or more regions. At the same time he realises that there are waterways which, though comprised in one region only, are, on account of their importance for communications, of such great interest to other regional groups, that they ought not to be excluded from general usage.

The Review contains several other interesting articles on economic, financial and historical matters, together with reports on recent events of international importance, economic news, international agreements and other documents, and book reviews.

The Association and the editors and contributors of the Review are to be congratulated for their work, which lends valuable support to the cause of international organisation.

M. H. BRESCH.

Prozatímní státní zřízení Československé republiky. Interim Constitutional Status of the Czechoslovak Republic. By Dr. JOSEF BUDNÍK. [Prague: Československý Kompas. 1947. 114 pp. Price Kčs. 66.00.]

THIS treatise is designed as a contribution to the study of the question of the continuity of the Czechoslovak State and its legal order. In his introduction the author gives an analytical summary of the juridically outstanding events which culminated in the Munich Agreement of September 29, 1938, and the Berlin Treaties of March 15 and 18, 1939, which claimed to set up a German Protectorate over the Czech and Slovak parts of the Czechoslovak State. He points out in particular that Czechoslovakia was never bound by the Munich Agreement as the Czechoslovak Government accepted it without the constitutional formalities stipulated in section 64 of the Charter of the Constitution. Similarly, the Berlin Protocol of March 15, 1939, signed by Dr. Hácha, could not acquire validity in international law since by his signature Dr. Hácha exceeded the scope of his constitutional powers (section 56 *et seq.* of the Charter of the Constitution). Moreover, a Slovak State could not come into existence since the Slovak people did not declare themselves independent but were declared independent by the German

Government in the interests of the German war aims; the German-Slovak protection treaty of March 18–23, 1939, which was ostensibly concluded between partners equal in international law, actually only set up a Slovak Protectorate, a formation lacking State sovereignty and therefore no State at all. The dynamic conception of German military and war operations as a whole justify the view that a state of war continued between Czechoslovakia and Germany and her satellites regardless of the circumstance that military operations ceased on March 15, 1939, with the occupation of the Czech territories, and that hostilities were not continued until the restoration of a Czechoslovak army abroad. From the angle of continuity of a state of war, the condition of affairs produced by the German, Polish and Hungarian actions after Munich appears as enemy occupation. Viewed from this angle, the annexations made by those countries were devoid of legal basis. The occupation merely produced a state of interregnum from March 16, 1939, when the then existing Czechoslovak Government came to an end, to July, 1940, when a new Czechoslovak Government was set up in London.

The author proceeds to show in detail that after March 16, 1939, there succeeded a state of constitutional emergency which led to the promulgation of Constitutional Decree No. 2/1940 in the Czechoslovak Official Gazette. This decree appointed for the time being the President of the Republic as the supreme legislative organ for the whole area of the jurisdiction of Czechoslovak law, and created the focus of the legal relevance of all the rules of present-day Czechoslovak law. This Constitutional Decree which is in conflict with the provisions of the Charter of Constitution of 1920, means in the author's opinion that between the Constitution of the first Republic and the Constitution of the interim State order there is no formal legal continuity; on the contrary, the Constitutional Decree No. 11 of the year 1944, which unconditionally adopted the constitutional and other laws issued after September 29, 1938, materially preserved the *legal* continuity of Czechoslovak law.

On the other hand, the provisional character of the constitutional status as an exception justified by unavoidable necessity was of course fully grasped by the authors of the new constitutional order from the point of view of the *political* continuity of the Czechoslovak State and of the democratic principles of its Constitution and from the very first days of liberation it was gradually replaced by an order which rapidly reverted to the democratic ideas of the first Constitution of the Czechoslovak State. In this connection the common rule of international law applies, according to which changes in a State Constitution are not of themselves decisive from the angle of international law if they do not affect the existence of the State as a subject of international law. The continuity of a

State, in the author's opinion, is to be conceived as the uninterrupted existence of a legal authority delegated by a rule of international law to legislate for a State.

The author gives a critical and exhaustive survey of the existing literature on the subject and reproduces at the end of the book the relevant international and Czechoslovak legal enactments, thus adding considerably to the value of this treatise as a sound guide to the fundamental problems of the current legal and constitutional developments of the Czecholovak State.

Dr. Oldrich Krob.

SELECTED OFFICIAL DOCUMENTS

The following documents are printed in the present issue:—

1. Protocol of the Proceedings of the Crimea Conference, February, 1945. (Cmd. 7088.)
2. Protocol of the Proceedings of the Berlin Conference, August, 1945. (Cmd. 7087.)
3. United Kingdom Draft of An International Bill of Human Rights, June, 1947.
4. Agreement between the United Nations and the International Civil Aviation Organisation.
5. Inter-American Treaty of Reciprocal Assistance.
6. Final Act of the Inter-American Conference for the maintenance of Continental Peace and Security.

The full texts of the Protocols of the Crimea and Berlin Conferences, parts of which had previously been treated as secret, were published as White Papers this year following their publication by the Soviet Government in Moscow during the meeting of the Council of Foreign Ministers. Commonly known as the Yalta and Potsdam Agreements respectively, they are documents of fundamental importance in the reconstruction of post-war international relations. They touch on matters as diverse as proposals for a new World Organisation in the form of the United Nations and the settlement of questions arising from the removal of oil equipment in Roumania. The most discussed parts have undoubtedly been the section of the Potsdam Agreement laying down the political and economic principles to govern the treatment of Germany in the initial control period and the section dealing with reparations from Germany. At Moscow, in March and April, 1947, the Foreign Ministers' debates centred on these sections, the United Kingdom delegation proposing a revision of the political and economic principles. In November, at the Council of Foreign Ministers in London these sections were once more the centre of debate.

The United Kingdom Draft of An International Bill of Human Rights includes information on the background and comments on the nature of the paper. The document, which speaks for itself, is worthy of careful study by anyone interested in the development of international law.

The Agreement between the United Nations and the International Civil Aviation Organisation is typical of the agreements so

far in force which bring specialised agencies into relationship with the United Nations in accordance with Articles 57 and 63 of the Charter. The agreements already in force are those between the United Nations and the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organisation and the Food and Agriculture Organisation. The agreement for the World Health Organisation will be similar to these. The Universal Postal Union and the International Telecommunications Union, having regard to their position as well-established technical organisations, are not going to be bound so closely. In the case of the International Bank and the International Monetary Fund, a much looser form of relationship has been approved by the Economic and Social Council because of the special character of these organisations.

The Inter-American Treaty on Reciprocal Assistance signed at Rio de Janeiro on September 2, 1947, committed the signatory parties to act collectively for the peace and security of the New World and to do this in accordance with the provisions of the Charter of the United Nations relating to regional arrangements. The treaty lays down in precise terms the agreed action to be taken in case of aggression from without or of aggression within the Hemisphere. In both instances the pledge is exclusively a *peace* pledge, as it recognises that ' peace is founded on justice and moral order and, consequently, on the international recognition and protection of human rights and freedoms, on the indispensable well-being of the people, and on the effectiveness of democracy for the international realisation of justice and security '. Additional pacific machinery is to be developed at another Inter-American Conference to be held at Bogota in January, 1948.

The Final Act of the Rio de Janeiro Conference is designed to give permanent form to the principles embodied in the Act of Chapultepec of 1945.

1

PROTOCOL OF THE PROCEEDINGS OF THE CRIMEA CONFERENCE [1]

Yalta, 11th February, 1945

The Crimea Conference of the Heads of the Governments of the United States of America, the United Kingdom, and the Union of Soviet Socialist Republics, which took place from the 4th–11th February, came to the following conclusions:—

1 ' Miscellaneous No. 7 (1947),' [Cmd.] 7088.

I.—World Organisation

It was decided:

(1) That a United Nations Conference on the proposed World Organisation should be summoned for Wednesday, the 25th April, 1945, and should be held in the United States of America.

(2) The nations to be invited to this Conference should be:

(a) the United Nations as they existed on the 8th February, 1945; and

(b) such of the Associated Nations as have declared war on the common enemy by the 1st March, 1945. (For this purpose by the term 'Associated Nations' was meant the eight Associated Nations and Turkey.)

When the Conference on World Organisation is held, the delegates of the United Kingdom and United States of America will support a proposal to admit to original membership two Soviet Socialist Republics, *i.e.*, the Ukraine and White Russia.

(3) That the United States Government on behalf of the Three Powers should consult the Government of China and the French Provisional Government in regard to the decisions taken at the present Conference concerning the proposed World Organisation.

(4) That the text of the invitation to be issued to all the nations which would take part in the United Nations Conference should be as follows:—

Invitation

'The Government of the United States of America, on behalf of itself and of the Governments of the United Kingdom, the Union of Soviet Socialist Republics, and the Republic of China and of the Provisional Government of the French Republic, invite the Government of to send representatives to a Conference of the United Nations to be held on the 25th April, 1945, or soon thereafter, at San Francisco in the United States of America to prepare a Charter for a General International Organisation for the maintenance of international peace and security.

'The above-named Governments suggest that the Conference consider as affording a basis for such a Charter the Proposals for the Establishment of a General International Organisation, which were made public last October as a result of the Dumbarton Oaks Conference,[2] and which have now been supplemented by the following provisions for Section C of Chapter VI:—

[2] 'Miscellaneous No. 4 (1944),' [Cmd.] 6560.

' " C. *Voting*

" 1. Each member of the Security Council should have one vote.

" 2. Decisions of the Security Council on procedural matters should be made by an affirmative vote of seven members.

" 3. Decisions of the Security Council on all other matters should be made by an affirmative vote of seven members, including the concurring votes of the permanent members; provided that, in decisions under Chapter VIII, Section A, and under the second sentence of paragraph 1 of Chapter VIII, Section C, a party to a dispute should abstain from voting."

' Further information as to arrangements will be transmitted subsequently.

' In the event that the Government of desires in advance of the Conference to present views or comments concerning the proposals, the Government of the United States of America will be pleased to transmit such views and comments to the other participating Governments.'

Territorial Trusteeship.

It was agreed that the five Nations which will have permanent seats on the Security Council should consult each other prior to the United Nations Conference on the question of territorial trusteeship.

The acceptance of this recommendation is subject to its being made clear that territorial trusteeship will only apply to (a) existing mandates of the League of Nations; (b) territories detached from the enemy as a result of the present war; (c) any other territory which might voluntarily be placed under trusteeship; and (d) no discussion of actual territories is contemplated at the forthcoming United Nations Conference or in the preliminary consultations, and it will be a matter for subsequent agreement which territories within the above categories will be placed under trusteeship.

II.—Declaration on Liberated Europe

The following declaration has been approved :—

' The Premier of the Union of Soviet Socialist Republics, the Prime Minister of the United Kingdom and the President of the United States of America have consulted with each other in the common interests of the peoples of their countries and those of liberated Europe. They jointly declare their mutual agreement to concert during the temporary period of instability in liberated Europe the policies of their three Governments in assisting the peoples liberated from the domination of Nazi Germany and the peoples of the former Axis satellite States of Europe to solve by democratic means their pressing political and economic problems.

' The establishment of order in Europe and the rebuilding of national economic life must be achieved by processes which will

enable the liberated peoples to destroy the last vestiges of Nazism and Fascism, and to create democratic institutions of their own choice. This is a principle of the Atlantic Charter [3]—the right of all peoples to choose the form of government under which they will live—the restoration of sovereign rights and self-government to those peoples who have been forcibly deprived of them by the aggressor nations.

'To foster the conditions in which the liberated peoples may exercise these rights, the three Governments will jointly assist the people in any European liberated State or former Axis satellite State in Europe where in their judgment conditions require (a) to establish conditions of internal peace; (b) to carry out emergency measures for the relief of distressed peoples; (c) to form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest possible establishment through free elections of Governments responsive to the will of the people; and (d) to facilitate where necessary the holding of such elections.

'The three Governments will consult the other United Nations and provisional authorities or other Governments in Europe when matters of direct interest to them are under consideration.

'When, in the opinion of the three Governments, conditions in any European liberated State or any former Axis satellite State in Europe make such action necessary, they will immediately consult together on the measures necessary to discharge the joint responsibilities set forth in this declaration.

'By this declaration we reaffirm our faith in the principles of the Atlantic Charter, our pledge in the Declaration by the United Nations, and our determination to build in co-operation with other peace-loving nations world order under law, dedicated to peace, security, freedom and general well-being of all mankind.

'In issuing this declaration, the Three Powers express the hope that the Provisional Government of the French Republic may be associated with them in the procedure suggested.'

III.—Dismemberment of Germany

It was agreed that Article 12 (a) of the Surrender Terms for Germany should be amended to read as follows :—

'The United Kingdom, the United States of America and Union of Soviet Socialist Republics shall possess supreme authority with respect to Germany. In the exercise of such authority they will take such steps including the complete disarmament, demilitarisation and the dismemberment of Germany as they deem requisite for future peace and security.'

[3] 'Treaty Series No. 5 (1942),' [Cmd.] 6388.

The study of the procedure for the dismemberment of Germany was referred to a Committee, consisting of Mr. Eden (Chairman), Mr. Winant and M. Gousev. This body would consider the desirability of associating with it a French representative.

IV.—Zone of Occupation for the French and Control Commission for Germany

It was agreed that a zone in Germany, to be occupied by the French Forces, should be allocated to France. This zone would be formed out of the British and American zones and its extent would be settled by the British and Americans in consultation with the French Provisional Government.

It was also agreed that the French Provisional Government should be invited to become a member of the Allied Control Commission for Germany.

V.—Reparation

The following Protocol has been approved :—

PROTOCOL

Conversations between the Heads of the three Governments at the Crimea Conference on the question of reparation in kind from Germany

The Heads of the three Governments have agreed as follows :—

1. Germany must pay in kind for the losses caused by her to the Allied nations in the course of the war. Reparations are to be received in the first instance by those countries which have borne the main burden of the war, have suffered the heaviest losses and have organised victory over the enemy.

2. Reparation in kind is to be exacted from Germany in three following forms :—

(a) Removals within two years from the surrender of Germany or the cessation of organised resistance from the national wealth of Germany located on the territory of Germany herself as well as outside her territory (equipment, machine-tools, ships, rolling-stock, German investments abroad, shares of industrial, transport and other enterprises in Germany, etc.), these removals to be carried out chiefly for purpose of destroying the war potential of Germany.

(b) Annual deliveries of goods from current production for a period to be fixed.

(c) Use of German labour.

3. For the working out on the above principles of a detailed plan for exaction of reparation from Germany an Allied Reparation Commission will be set up in Moscow. It will consist of three representatives—one from the Union of Soviet Socialist Republics,

one from the United Kingdom and one from the United States of America.

4. With regard to the fixing of the total sum of the reparation as well as the distribution of it among the countries which suffered from the German aggression the Soviet and American delegations agreed as follows :—

> 'The Moscow Reparation Commission should take in its initial studies as a basis for discussion the suggestion of the Soviet Government that the total sum of the reparation in accordance with the points (a) and (b) of the paragraph 2 should be 20 billion dollars and that 50 per cent. of it should go to the Union of Soviet Socialist Republics.'

The British delegation was of the opinion that pending consideration of the reparation question by the Moscow Reparation Commission no figures of reparation should be mentioned.

The above Soviet-American proposal has been passed to the Moscow Reparation Commission as one of the proposals to be considered by the Commission.

VI.—Major War Criminals

The Conference agreed that the question of the major war criminals should be the subject of inquiry by the three Foreign Secretaries for report in due course after the close of the Conference.

VII.—Poland

The following Declaration on Poland was agreed by the Conference :—

> 'A new situation has been created in Poland as a result of her complete liberation by the Red Army. This calls for the establishment of a Polish Provisional Government which can be more broadly based than was possible before the recent liberation of the Western part of Poland. The Provisional Government which is now functioning in Poland should therefore be reorganised on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad. This new Government should then be called the Polish Provisional Government of National Unity.
>
> 'M. Molotov, Mr. Harriman and Sir A. Clark Kerr are authorised as a Commission to consult in the first instance in Moscow with members of the present Provisional Government and with other Polish democratic leaders from within Poland and from abroad, with a view to the reorganisation of the present Government along the above lines. This Polish Provisional Government of National Unity shall be pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot. In these elections all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates.

'When a Polish Provisional Government of National Unity has been properly formed in conformity with the above, the Government of the U.S.S.R., which now maintains diplomatic relations with the present Provisional Government of Poland, and the Government of the United Kingdom and the Government of the U.S.A. will establish diplomatic relations with the new Polish Provisional Government of National Unity, and will exchange Ambassadors by whose reports the respective Governments will be kept informed about the situation in Poland.

'The three Heads of Government consider that the Eastern frontier of Poland should follow the Curzon Line with digressions from it in some regions of 5 to 8 kilometres in favour of Poland. They recognise that Poland must receive substantial accessions of territory in the North and West. They feel that the opinion of the new Polish Provisional Government of National Unity should be sought in due course on the extent of these accessions and that the final delimitation of the Western frontier of Poland should thereafter await the Peace Conference.'

VIII.—Yugoslavia

It was agreed to recommend to Marshal Tito and to Dr. Subasić:

(a) That the Tito-Subasić Agreement should immediately be put into effect and a new Government formed on the basis of the Agreement.

(b) That as soon as the new Government has been formed it should declare:

(i) that the Anti-Fascist Assembly of National Liberation (Avnoj) will be extended to include members of the last Yugoslav Skupshtina who have not compromised themselves by collaboration with the enemy, thus forming a body to be known as a temporary Parliament, and

(ii) that legislative acts passed by the Anti-Fascist Assembly of National Liberation (Avnoj) will be subject to subsequent ratification by a Constituent Assembly;

and that this statement should be published in the communiqué of the Conference.

IX.—Italo-Yugoslav Frontier

Italo-Austrian Frontier

Notes on these subjects were put in by the British delegation and the American and Soviet delegations agreed to consider them and give their views later.

X.—Yugoslav-Bulgarian Relations

There was an exchange of views between the Foreign Secretaries on the question of the desirability of a Yugoslav-Bulgarian pact of alliance. The question at issue was whether a State still under an armistice régime could be allowed to enter into a treaty with another State. Mr. Eden suggested that the Bulgarian and Yugoslav Governments should be informed that this could not be approved. Mr. Stettinius suggested that the British and American Ambassadors should discuss the matter further with M. Molotov in Moscow. M. Molotov agreed with the proposal of Mr. Stettinius.

XI.—South-Eastern Europe

The British Delegation put in notes for the consideration of their colleagues on the following subjects:—

(a) The Control Commission in Bulgaria.
(b) Greek claims upon Bulgaria, more particularly with reference to reparations.
(c) Oil equipment in Roumania.

XII.—Persia

Mr. Eden, Mr. Stettinius, and M. Molotov exchanged views on the situation in Persia. It was agreed that this matter should be pursued through the diplomatic channel.

XIII.—Meetings of the Three Foreign Secretaries

The Conference agreed that permanent machinery should be set up for consultation between the three Foreign Secretaries; they should meet as often as necessary probably about every three or four months.

These meetings will be held in rotation in the three capitals, the first meeting being held in London.

XIV.—The Montreux Convention and the Straits

It was agreed that at the next meeting of the three Foreign Secretaries to be held in London, they should consider proposals which it was understood the Soviet Government would put forward in relation to the Montreux Convention[4] and report to their Governments. The Turkish Government should be informed at the appropriate moment.

The foregoing Protocol was approved and signed by the three Foreign Secretaries at the Crimea Conference, 11th February, 1945.

E. R. STETTINIUS, JR.
V. MOLOTOV.
ANTHONY EDEN.

[4] 'Treaty Series No. 30 (1937),' [Cmd.] 5551.

2

PROTOCOL OF THE PROCEEDINGS OF THE BERLIN CONFERENCE [1]

Berlin, 2nd August, 1945

The Berlin Conference of the three heads of government of the U.S.S.R., United States and United Kingdom which took place from the 17th July to the 2nd August, 1945, came to the following conclusions:—

I.—Establishment of a Council of Foreign Ministers

A. The Conference reached the following Agreement for the establishment of a Council of Foreign Ministers to do the necessary preparatory work for the peace settlements:—

(1) There shall be established a Council composed of the Foreign Ministers of the United Kingdom, the Union of Soviet Socialist Republics, China, France and the United States.

(2) (i) The Council shall normally meet in London, which shall be the permanent seat of the joint Secretariat which the Council will form. Each of the Foreign Ministers will be accompanied by a high-ranking Deputy, duly authorised to carry on the work of the Council in the absence of his Foreign Minister, and by a small staff of technical advisers.

(ii) The first meeting of the Council shall be held in London not later than the 1st September, 1945. Meetings may be held by common agreement in other capitals as may be agreed from time to time.

(3) (i) As its immediate important task, the Council shall be authorised to draw up, with a view to their submission to the United Nations, treaties of peace with Italy, Roumania, Bulgaria, Hungary and Finland, and to propose settlements of territorial questions outstanding on the termination of the war in Europe. The Council shall be utilised for the preparation of a peace settlement for Germany to be accepted by the Government of Germany when a Government adequate for the purpose is established.

(ii) For the discharge of each of these tasks the Council will be composed of the Members representing those States which were signatory to the terms of surrender imposed upon the enemy State concerned. For the purposes of the peace settlement for Italy, France shall be regarded as signatory to the terms of surrender for Italy. Other Members will be invited to participate when matters directly concerning them are under discussion.

[1] 'Miscellaneous No. 6 (1947),' [Cmd.] 7087.

(iii) Other matters may from time to time be referred to the Council by agreement between the Member Governments.

(4) (i) Whenever the Council is considering a question of direct interest to a State not represented thereon, such State should be invited to send representatives to participate in the discussion and study of that question.

(ii) The Council may adapt its procedure to the particular problem under consideration. In some cases it may hold its own preliminary discussions prior to the participation of other interested States. In other cases, the Council may convoke a formal conference of the State chiefly interested in seeking a solution of the particular problem.

B. It was agreed that the three Governments should each address an identical invitation to the Governments of China and France to adopt this text and to join in establishing the Council. The text of the approved invitation was as follows:—

COUNCIL OF FOREIGN MINISTERS

Draft for identical invitation to be sent separately by each of the Three Governments to the Governments of China and France

'The Governments of the United Kingdom, the United States and the U.S.S.R. consider it necessary to begin without delay the essential preparatory work upon the peace settlements in Europe. To this end they are agreed that there should be established a Council of the Foreign Ministers of the Five Great Powers to prepare treaties of peace with the European enemy States, for submission to the United Nations. The Council would also be empowered to propose settlements of outstanding territorial questions in Europe and to consider such other matters as member Governments might agree to refer to it.

'The text adopted by the Three Governments is as follows:—

(Here insert final agreed text of the Proposal.)

'In agreement with the Governments of the *United States and U.S.S.R., His Majesty's Government in the United Kingdom and U.S.S.R., the United States Government, the United Kingdom and the Soviet Government* extend a cordial invitation to the Government of *China* (*France*) to adopt the text quoted above and to join in setting up the Council. *His Majesty's Government, the United States Government, the Soviet Government* attach much importance to the participation of the *Chinese Government* (*French Government*) in the proposed arrangements, and they hope to receive an early and favourable reply to this invitation.'

C. The establishment of the Council of Foreign Ministers for the specific purposes named in the text will be without prejudice to the Agreement of the Crimea Conference [2] that there should be periodical consultation between the Foreign Secretaries of the United States, the Union of Soviet Socialist Republics and the United Kingdom.

D. The Conference also considered the position of the European Advisory Commission in the light of the Agreement to establish the Council of Foreign Ministers. It was noted with satisfaction that the Commission had ably discharged its principal tasks by the recommendations that it had furnished for the terms of surrender for Germany, for the zones of occupation in Germany and Austria, and for the inter-Allied control machinery in those countries. It was felt that further work of a detailed character for the co-ordination of Allied policy for the control of Germany and Austria would in future fall within the competence of the Control Council in Berlin and the Allied Commission at Vienna. Accordingly it was agreed to recommend that the European Advisory Commission be dissolved.

II.—The Principles to Govern the Treatment of Germany in the Initial Control Period

A.—*Political Principles*

1. In accordance with the Agreement on Control Machinery in Germany,[3] supreme authority in Germany is exercised, on instructions from their respective Governments, by the Commanders-in-Chief of the armed forces of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics and the French Republic, each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole, in their capacity as members of the Control Council.

2. So far as is practicable, there shall be uniformity of treatment of the German population throughout Germany.

3. The purposes of the occupation of Germany by which the Control Council shall be guided are—

(i) The complete disarmanent and demilitarisation of Germany and the elimination or control of all German industry that could be used for military production. To these ends:—

(a) All German land, naval and air forces, the S.S., S.A., S.D. and Gestapo, with all their organisations, staffs and institutions, including the General Staff, the Officers' Corps, Reserve Corps, military schools, war veterans' organisations and all other military and semi-military organisations, together with all clubs and associations which serve to keep alive the

2 'Miscellaneous No. 5 (1945),' [Cmd.] 6598.
3 'Germany No. 1 (1945),' [Cmd.] 6648.

military tradition in Germany, shall be completely and finally abolished in such manner as permanently to prevent the revival or reorganisation of German militarism and Nazism;

(b) All arms, ammunition and implements of war and all specialised facilities for their production shall be held at the disposal of the Allies or destroyed. The maintenance and production of all aircraft and all arms, ammunition and implements of war shall be prevented.

(ii) To convince the German people that they have suffered a total military defeat and that they cannot escape responsibility for what they have brought upon themselves, since their own ruthless warfare and the fanatical Nazi resistance have destroyed German economy and made chaos and suffering inevitable.

(iii) To destroy the National Socialist Party and its affiliated and supervised organisations, to dissolve all Nazi institutions, to ensure that they are not revived in any form, and to prevent all Nazi and militarist activity or propaganda.

(iv) To prepare for the eventual reconstruction of German political life on a democratic basis and for eventual peaceful co-operation in international life by Germany.

4. All Nazi laws which provided the basis of the Hitler régime or established discrimination on grounds of race, creed, or political opinion shall be abolished. No such discriminations, whether legal, administrative or otherwise, shall be tolerated.

5. War criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgment. Nazi leaders, influential Nazi supporters and high officials of Nazi organisations and institutions and any other persons dangerous to the occupation or its objectives shall be arrested and interned.

6. All members of the Nazi party who have been more than nominal participants in its activities and all other persons hostile to Allied purposes shall be removed from public and semi-public office, and from positions of responsibility in important private undertakings. Such persons shall be replaced by persons who, by their political and moral qualities, are deemed capable of assisting in developing genuine democratic institutions in Germany.

7. German education shall be so controlled as completely to eliminate Nazi and militarist doctrines and to make possible the successful development of democratic ideas.

8. The judicial system will be reorganised in accordance with the principles of democracy, of justice under law, and of equal rights for all citizens without distinction of race, nationality or religion.

9. The administration in Germany should be directed towards the decentralisation of the political structure and the development of local responsibility. To this end:—

(i) Local self-government shall be restored throughout Germany on democratic principles and in particular through elective councils as rapidly as is consistent with military security and the purposes of military occupation;

(ii) all democratic political parties with rights of assembly and of public discussion shall be allowed and encouraged throughout Germany;

(iii) representative and elective principles shall be introduced into regional, provincial and State (Land) administration as rapidly as may be justified by the successful application of these principles in local self-government;

(iv) for the time being, no central German Government shall be established. Notwithstanding this, however, certain essential central German administrative departments, headed by State Secretaries, shall be established, particularly in the fields of finance, transport, communications, foreign trade and industry. Such departments will act under the direction of the Control Council.

10. Subject to the necessity for maintaining military security, freedom of speech, press and religion shall be permitted, and religious institutions shall be respected. Subject likewise to the maintenance of military security, the formation of free trade unions shall be permitted.

B.—*Economic Principles*

11. In order to eliminate Germany's war potential, the production of arms, ammunition and implements of war as well as all types of aircraft and sea-going ships shall be prohibited and prevented. Production of metals, chemicals machinery and other items that are directly necessary to a war economy, shall be rigidly controlled and restricted to Germany's approved post-war peacetime needs to meet the objectives stated in paragraph 15. Productive capacity not needed for permitted production shall be removed in accordance with the reparations plan recommended by the Allied Commission on reparations and approved by the Governments concerned or, if not removed, shall be destroyed.

12. At the earliest practicable date, the German economy shall be decentralised for the purpose of eliminating the present excessive concentration of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements.

13. In organising the German economy, primary emphasis shall be given to the development of agriculture and peaceful domestic industries.

14. During the period of occupation Germany shall be treated

as a single economic unit. To this end common policies shall be established in regard to—

(a) mining and industrial production and its allocation;
(b) agriculture, forestry and fishing;
(c) wages, prices and rationing;
(d) import and export programmes for Germany as a whole;
(e) currency and banking, central taxation and customs;
(f) reparation and removal of industrial war potential;
(g) transportation and communications.

In applying these policies account shall be taken, where appropriate, of varying local conditions.

15. Allied controls shall be imposed upon the German economy but only to the extent necessary—

(a) to carry out programmes of industrial disarmament and demilitarisation, of reparations, and of approved exports and imports;
(b) to assure the production and maintenance of goods and services required to meet the needs of the occupying forces and displaced persons in Germany and essential to maintain in Germany average living standards not exceeding the average of the standards of living of European countries. (European countries means all European countries excluding the United Kingdom and the Union of Soviet Socialist Republics);
(c) to ensure in the manner determined by the Control Council the equitable distribution of essential commodities between the several zones so as to produce a balanced economy throughout Germany and reduce the need for imports;
(d) to control German industry and all economic and financial international transactions, including exports and imports, with the aim of preventing Germany from developing a war potential and of achieving the other objectives named herein;
(e) to control all German public or private scientific bodies, research and experimental institutions, laboratories, etc., connected with economic activities.

16. In the imposition and maintenance of economic controls established by the Control Council, German administrative machinery shall be created and the German authorities shall be required to the fullest extent practicable to proclaim and assume administration of such controls. Thus it should be brought home to the German people that the responsibility for the administration of such controls and any breakdown in these controls will rest with themselves. Any German controls which may run counter to the objectives of occupation will be prohibited.

17. Measures shall be promptly taken—

(a) to effect essential repair of transport;
(b) to enlarge coal production;

(c) to maximise agricultural output;

(d) to effect emergency repair of housing and essential utilities.

18. Appropriate steps shall be taken by the Control Council to exercise control and the power of disposition over German-owned external assets not already under the control of United Nations which have taken part in the war against Germany.

19. Payment of reparations should leave enough resources to enable the German people to subsist without external assistance. In working out the economic balance of Germany the necessary means must be provided to pay for imports approved by the Control Council in Germany. The proceeds of exports from current production and stocks shall be available in the first place for payment for such imports.

The above clause will not apply to the equipment and products referred to in paragraph 4 (a) and 4 (b) of the Reparations Agreement.

III.—Reparations from Germany

1. Reparation claims of the U.S.S.R. shall be met by removals from the zone of Germany occupied by the U.S.S.R., and from appropriate German external assets.

2. The U.S.S.R. undertakes to settle the reparation claims of Poland from its own share of reparations.

3. The reparations claims of the United States, the United Kingdom and other countries entitled to reparations shall be met from the Western Zones and from appropriate German external assets.

4. In addition to the reparations to be taken by the U.S.S.R. from its own zone of occupation, the U.S.S.R. shall receive additionally from the Western Zones :

(a) 15 per cent. of such usable and complete industrial capital equipment, in the first place from the metallurgical, chemical and machine manufacturing industries, as is unnecessary for the German peace economy and should be removed from the Western Zones of Germany, in exchange for an equivalent value of food, coal, potash, zinc, timber, clay products, petroleum products, and such other commodities as may be agreed upon.

(b) 10 per cent. of such industrial capital equipment as is unnecessary for the German peace economy and should be removed from the Western Zones, to be transferred to the Soviet Government on reparations account without payment or exchange of any kind in return.

Removals of equipment as provided in (a) and (b) above shall be made simultaneously.

5. The amount of equipment to be removed from the Western Zones on account of reparations must be determined within six months from now at the latest.

6. Removals of industrial capital equipment shall begin as soon as possible and shall be completed within two years from the determination specified in paragraph 5. The delivery of products covered by 4 (a) above shall begin as soon as possible and shall be made by the U.S.S.R. in agreed instalments within five years of the date hereof. The determination of the amount and character of the industrial capital equipment unnecessary for the German peace economy and therefore available for reparations shall be made by the Control Council under policies fixed by the Allied Commission on Reparations, with the participation of France, subject to the final approval of the Zone Commander in the Zone from which the equipment is to be removed.

7. Prior to the fixing of the total amount of equipment subject to removal, advance deliveries shall be made in respect of such equipment as will be determined to be eligible for delivery in accordance with the procedure set forth in the last sentence of paragraph 6.

8. The Soviet Government renounces all claims in respect of reparations to shares of German enterprises which are located in the Western Zones of occupation in Germany as well as to German foreign assets in all countries except those specified in paragraph 9 below.

9. The Governments of the United Kingdom and United States renounce all claims in respect of reparations to shares of German enterprises which are located in the Eastern Zone of occupation in Germany, as well as to German foreign assets in Bulgaria, Finland, Hungary, Roumania and Eastern Austria.

10. The Soviet Government makes no claims to gold captured by the Allied troops in Germany.

IV.—Disposal of the German Navy and Merchant Marine

A

The following principles for the distribution of the German Navy were agreed:—

(1) The total strength of the German surface navy, excluding ships sunk and those taken over from Allied Nations, but including ships under construction or repair, shall be divided equally among the U.S.S.R., United Kingdom and United States.

(2) Ships under construction or repair means those ships whose construction or repair may be completed within three to six months, according to the type of ship. Whether such ships under construction or repair shall be completed or repaired shall be determined by the technical commission appointed by the Three Powers and referred to below, subject to the principle that their completion or repair must be achieved within the time limits above

provided, without any increase of skilled employment in the German ship yards and without permitting the reopening of any German ship building or connected industries. Completion date means the date when a ship is able to go out on its first trip, or, under peace-time standards, would refer to the customary date of delivery by shipyard to the Government.

(3) The larger part of the German submarine fleet shall be sunk. Not more than thirty submarines shall be preserved and divided equally between the U.S.S.R., United Kingdom and United States for experimental and technical purposes.

(4) All stocks of armament, ammunition and supplies of the German Navy appertaining to the vessels transferred pursuant to paragraphs (1) and (3) hereof shall be handed over to the respective Powers receiving such ships.

(5) The Three Governments agree to constitute a tripartite naval commission comprising two representatives for each Government, accompanied by the requisite staff, to submit agreed recommendations to the Three Governments for the allocation of specific German warships and to handle other detailed matters arising out of the Agreement between the Three Governments regarding the German fleet. The Commission will hold its first meeting not later than the 15th August, 1945, in Berlin, which shall be its headquarters. Each Delegation on the Commission will have the right, on the basis of reciprocity, to inspect German warships wherever they may be located.

(6) The Three Governments agree that transfers, including those of ships under construction and repair, shall be completed as soon as possible, but not later than the 15th February, 1946. The Commission will submit fortnightly reports, including proposals for the progressive allocation of the vessels when agreed by the Commission.

B

The following principles for the distribution of the German Merchant Marine were agreed:—

(1) The German Merchant Marine, surrendered to the Three Powers and wherever located, shall be divided equally among the U.S.S.R., the United Kingdom and the United States. The actual transfers of the ships to the respective countries shall take place as soon as practicable after the end of the war against Japan. The United Kingdom and the United States will provide out of their shares of the surrendered German merchant ships appropriate amounts for other Allied States whose merchant marines have

suffered heavy losses in the common cause against Germany, except that the Soviet Union shall provide out of its share for Poland.

(2) The allocation, manning and operation of these ships during the Japanese War period shall fall under the cognisance and authority of the Combined Shipping Adjustment Board and the United Maritime Authority.

(3) While actual transfer of the ships shall be delayed until after the end of the war with Japan, a Tripartite Shipping Commission shall inventory and value all available ships and recommend a specific distribution in accordance with paragraph (1).

(4) German inland and coastal ships determined to be necessary to the maintenance of the basic German peace economy by the Allied Control Council of Germany shall not be included in the shipping pool thus divided among the Three Powers.

(5) The Three Governments agree to constitute a tripartite merchant marine commission comprising two representatives for each Government, accompanied by the requisite staff, to submit agreed recommendations to the Three Governments for the allocation of specific German merchant ships and to handle other detailed matters arising out of the agreement between the Three Governments regarding the German merchant ships. The Commission will hold its first meeting not later than the 1st September, 1945, in Berlin, which shall be its headquarters. Each delegation on the Commission will have the right, on the basis of reciprocity, to inspect the German merchant ships wherever they may be located.

V.—City of Königsberg and the Adjacent Area

The Conference examined a proposal by the Soviet Government to the effect that, pending the final determination of territorial questions at the peace settlement, the section of the western frontier of the Union of Soviet Socialist Republics which is adjacent to the Baltic Sea should pass from a point on the eastern shore of the Bay of Danzig to the east, north of Braunsberg-Goldap, to the meeting point of the frontiers of Lithuania, the Polish Republic and East Prussia.

The Conference has agreed in principle to the proposal of the Soviet Government concerning the ultimate transfer to the Soviet Union of the City of Königsberg and the area adjacent to it as described above subject to expert examination of the actual frontier.

The President of the United States and the British Prime Minister have declared that they will support the proposal of the Conference at the forthcoming peace settlement.

VI.—War Criminals

The Three Governments have taken note of the discussions which have been proceeding in recent weeks in London between British, United States, Soviet and French representatives with a view to reaching agreement on the methods of trial of those major war criminals whose crimes under the Moscow Declaration of October 1943 have no particular geographical localisation. The Three Governments reaffirm their intention to bring these criminals to swift and sure justice. They hope that the negotiations in London will result in speedy agreement being reached for this purpose, and they regard it as a matter of great importance that the trial of these major criminals should begin at the earliest possible date. The first list of defendants will be published before the 1st September.

VII.—Austria

The Conference examined a proposal by the Soviet Government on the extension of the authority of the Austrian Provisional Government to all of Austria.

The three Governments agreed that they were prepared to examine this question after the entry of the British and American forces into the city of Vienna.

It was agreed that reparations should not be exacted from Austria.

VIII.—Poland

A.—*Declaration*

We have taken note with pleasure of the agreement reached among representative Poles from Poland and abroad which has made possible the formation, in accordance with the decisions reached at the Crimea Conference, of a Polish Provisional Government of National Unity recognised by the Three Powers. The establishment by the British and United States Governments of diplomatic relations with the Polish Provisional Government of National Unity has resulted in the withdrawal of their recognition from the former Polish Government in London, which no longer exists.

The British and United States Governments have taken measures to protect the interests of the Polish Provisional Government of National Unity, as the recognised Government of the Polish State, in the property belonging to the Polish State located in their territories and under their control, whatever the form of this property may be. They have further taken measures to prevent alienation to third parties of such property. All proper facilities will be given to the Polish Provisional Government of National Unity for the exercise of the ordinary legal remedies for the recovery of any property belonging to the Polish State which may have been wrongfully alienated.

The Three Powers are anxious to assist the Polish Provisional Government of National Unity in facilitating the return to Poland as soon as practicable of all Poles abroad who wish to go, including members of the Polish armed forces and the merchant marine. They expect that those Poles who return home shall be accorded personal and property rights on the same basis as all Polish citizens.

The Three Powers note that the Polish Provisional Government of National Unity in accordance with the decisions of the Crimea Conference has agreed to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot in which all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates; and that representatives of the Allied press shall enjoy full freedom to report to the world upon developments in Poland before and during the elections.

B.—*Western Frontier of Poland*

In conformity with the Agreement on Poland reached at the Crimea Conference the three Heads of Government have sought the opinion of the Polish Provisional Government of National Unity in regard to the accession of territory in the north and west which Poland should receive. The President of the National Council of Poland and members of the Polish Provisional Government of National Unity have been received at the Conference and have fully presented their views. The three Heads of Government reaffirm their opinion that the final delimitation of the western frontier of Poland should await the peace settlement.

The three Heads of Government agree that, pending the final determination of Poland's western frontier, the former German territories east of a line running from the Baltic Sea immediately west of Swinemünde, and thence along the Oder River to the confluence of the western Neisse River and along the western Neisse to the Czechoslovak frontier, including that portion of East Prussia not placed under the administration of the Union of Soviet Socialist Republics in accordance with the understanding reached at this conference and including the area of the former Free City of Danzig, shall be under the administration of the Polish State and for such purposes should not be considered as part of the Soviet zone of occupation in Germany.

IX.—Conclusion of Peace Treaties and Admission to the United Nations Organisation

The Three Governments consider it desirable that the present anomalous position of Italy, Bulgaria, Finland, Hungary and Roumania should be terminated by the conclusion of Peace Treaties. They trust that the other interested Allied Governments will share these views.

For their part the Three Governments have included the preparation of a Peace Treaty for Italy as the first among the immediate important tasks to be undertaken by the new Council of Foreign Ministers. Italy was the first of the Axis Powers to break with Germany, to whose defeat she has made a material contribution, and has now joined with the Allies in the struggle against Japan. Italy has freed herself from the Fascist régime and is making good progress towards re-establishment of a democratic government and institutions. The conclusion of such a Peace Treaty with a recognised and democratic Italian Government will make it possible for the Three Governments to fulfil their desire to support an application from Italy for membership of the United Nations.

The Three Governments have also charged the Council of Foreign Ministers with the task of preparing Peace Treaties for Bulgaria, Finland, Hungary and Roumania. The conclusion of Peace Treaties with recognised democratic Governments in these States will also enable the Three Governments to support applications from them for membership of the United Nations. The Three Governments agree to examine, each separately in the near future, in the light of the conditions then prevailing, the establishment of diplomatic relations with Finland, Roumania, Bulgaria and Hungary, to the extent possible prior to the conclusion of Peace Treaties with those countries.

The Three Governments have no doubt that in view of the changed conditions resulting from the termination of the war in Europe, representatives of the Allied press will enjoy full freedom to report to the world upon developments in Roumania, Bulgaria, Hungary and Finland.

As regards the admission of other States into the United Nations Organisation, Article 4 of the Charter of the United Nations[1] declares that:—

1. Membership in the United Nations is open to all other peace-loving States who accept the obligations contained in the present Charter and, in the judgment of the organisation, are able and willing to carry out these obligations;
2. The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

The Three Governments, so far as they are concerned, will support applications for membership from those States which have remained neutral during the war and which fulfil the qualifications set out above.

The Three Governments feel bound, however, to make it clear that they for their part would not favour any application for membership put forward by the present Spanish Government,

[1] 'Treaty Series No. 67 (1946),' [Cmd.] 7015.

which, having been founded with the support of the Axis Powers, does not, in view of its origins, its nature, its record and its close association with the aggressor States, possess the qualifications necessary to justify such membership.

X.—Territorial Trusteeship

The Conference examined a proposal by the Soviet Government on the question of trusteeship territories as defined in the decision of the Crimea Conference and in the Charter of the United Nations Organisation.

After an exchange of views on this question it was decided that the disposition of any former Italian Colonial territories was one to be decided in connection with the preparation of a peace treaty for Italy and that the question of Italian Colonial territory would be considered by the September Council of Ministers for Foreign Affairs.

XI.—Revised Allied Control Commission Procedure in Roumania, Bulgaria and Hungary

The Three Governments took note that the Soviet Representatives on the Allied Control Commissions in Roumania, Bulgaria and Hungary have communicated to their United Kingdom and United States colleagues proposals for improving the work of the Control Commissions, now that hostilities in Europe have ceased.

The Three Governments agreed that the revision of the procedures of the Allied Control Commissions in these countries would now be undertaken, taking into account the interests and responsibilities of the Three Governments which together presented the terms of armistice to the respective countries, and accepting as a basis, in respect of all three countries, the Soviet Government's proposals for Hungary as annexed hereto. (Annex I.)

XII.—Orderly Transfer of German Populations

The Three Governments, having considered the question in all its aspects, recognise that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner.

Since the influx of a large number of Germans into Germany would increase the burden already resting on the occupying authorities, they consider that the Control Council in Germany should, in the first instance, examine the problem, with special regard to the question of the equitable distribution of these Germans among the several zones of occupation. They are accordingly instructing their respective representatives on the Control Council to report to their Governments as soon as possible the extent to which such persons have already entered Germany from

Poland, Czechoslovakia and Hungary, and to submit an estimate of the time and rate at which further transfers could be carried out having regard to the present situation in Germany.

The Czechoslovak Government, the Polish Provisional Government and the Control Council in Hungary are at the same time being informed of the above and are being requested meanwhile to suspend further expulsions pending an examination by the Governments concerned of the report from their representatives on the Control Council.

XIII.—Oil Equipment in Roumania

The Conference agreed to set up two bilateral commissions of experts, one to be composed of United Kingdom and Soviet members, and one to be composed of United States and Soviet members, to investigate the facts and examine the documents, as a basis for the settlement of questions arising from the removal of oil equipment in Roumania. It was further agreed that these experts shall begin their work within ten days, on the spot.

XIV.—Iran

It was agreed that Allied troops should be withdrawn immediately from Tehran, and that further stages of the withdrawal of troops from Iran should be considered at the meeting of the Council of Foreign Ministers to be held in London in September 1945.

XV.—The International Zone of Tangier

A proposal by the Soviet Government was examined and the following decisions were reached.

Having examined the question of the Zone of Tangier, the three Governments have agreed that this Zone, which includes the city of Tangier and the area adjacent to it, in view of its special stategic importance shall remain international.

The question of Tangier will be discussed in the near future at a Meeting in Paris of representatives of the Governments of the Union of Soviet Socialist Republics, the United States, the United Kingdom and France.

XVI.—The Black Sea Straits

The three Governments recognised that the Convention concluded at Montreux [5] should be revised as failing to meet present-day conditions.

It was agreed that, as the next step, the matter should be the subject of direct conversations between each of the three Governments and the Turkish Government.

[5] 'Treaty Series No. 30 (1937),' [Cmd.] 5551.

XVII.—International Inland Waterways

The Conference considered a proposal of the United States Delegation on this subject and agreed to refer it for consideration to the forthcoming meeting of the Council of Foreign Ministers in London.

XVIII.—European Inland Transport Conference

The British and United States Delegations to the Conference informed the Soviet Delegation of the desire of the British and United States Governments to reconvene the European Inland Transport Conference, and stated that they would welcome an assurance that the Soviet Government would participate in the work of the reconvened conference. The Soviet Government agreed that it would participate in this conference.

XIX.—Directives to Military Commanders on Allied Control Council for Germany

The three Governments agreed that each would send a directive to its representative on the Control Council for Germany informing him of all decisions of the Conference affecting matters within the scope of his duties.

XX.—Use of Allied Property for Satellite Reparations or 'War Trophies'

The proposal (Annex II) presented by the United States Delegation was accepted in principle by the Conference, but the drafting of an agreement on the matter was left to be worked out through diplomatic channels.

XXI.—Military Talks

During the Conference there were meetings between the Chiefs of Staff of the three Governments on military matters of common interest.

(Signed) J. V. STALIN.
HARRY S. TRUMAN.
C. R. ATTLEE.

Berlin, 2nd August, 1945.

ANNEX I

Text of a Letter Transmitted on 12th July to the Representatives of the United States and United Kingdom Governments on the Allied Control Commission in Hungary.

'In view of the changed situation in connection with the termination of the war against Germany, the Soviet Government finds it necessary to establish the following order of work for the Allied Control Commission in Hungary:—

1. During the period up to the conclusion of peace with Hungary the President (or Vice-President) of the A.C.C. will regularly call conferences with the British and American representatives for the purpose of discussing the most important questions relating to the work of the A.C.C. The conferences will be called once in 10 days, or more frequently in case of need.

Directives of the A.C.C. on questions of principle will be issued to the Hungarian authorities by the President of the Allied Control Commission after agreement on these directives with the English and American representatives.

2. The British and American representatives in the A.C.C. will take part in general conferences of heads of divisions and delegates of the A.C.C., convoked by the President of the A.C.C., which meetings will be regular in nature. The British and American representatives will also participate personally or through their representatives in appropriate instances in mixed commissions created by the President of the A.C.C. for questions connected with the execution by the A.C.C. of its functions.

3. Free movement by the American and British representatives in the country will be permitted provided that the A.C.C. is previously informed of the time and route of the journeys.

4. All questions connected with permission for the entrance and exit of members of the staff of the British and American representatives in Hungary will be decided on the spot by the President of the A.C.C. within a time-limit of not more than one week.

5. The bringing in and sending out by plane of mail, cargoes and diplomatic couriers will be carried out by the British and American representatives on the A.C.C. under arrangements and within time-limits established by the A.C.C., or in special cases by previous co-ordination with the President of the A.C.C.

I consider it necessary to add to the above that in all other points the existing Statutes regarding the A.C.C. in Hungary, which was confirmed on the 20th January, 1945, shall remain in force in the future.'

ANNEX II

1. The burden of reparation and ' war trophies ' should not fall on Allied nationals.

2. *Capital Equipment.*—We object to the removal of such Allied property as reparations, ' war trophies ', or under any other guise. Loss would accrue to Allied nationals as a result of destruction of plants and the consequent loss of markets and trading connections. Seizure of Allied property makes impossible the fulfilment by the satellite of its obligation under the armistice to restore intact the rights and interests of the Allied Nations and their nationals.

The United States looks to the other occupying Powers for the return of any equipment already removed and the cessation of removals. Where such equipment will not or cannot be returned, the United States will demand of the satellite adequate, effective and prompt compensation to American nationals, and that such compensation have priority equal to that of the reparations payment.

These principles apply to all property wholly or substantially owned by Allied nationals. In the event of removals of property in which the American as well as the entire Allied interest is less than substantial, the United States expects adequate, effective, and prompt compensation.

3. *Current Production.*—While the United States does not oppose reparation out of current production of Allied investments, the satellite must provide immediate and adequate compensation to the Allied nationals including sufficient foreign exchange or products so that they can recover reasonable foreign currency expenditures and transfer a reasonable return on their investment. Such compensation must also have equal priority with reparations.

We deem it essential that the satellites do not conclude treaties, agreements or arrangements which deny to Allied nationals access, on equal terms to their trade, raw materials and industry; and appropriately modify any existing arrangements which may have that effect.

3

AN INTERNATIONAL BILL OF HUMAN RIGHTS [1]

I. Human Rights in the Charter of the United Nations

The peoples of the United Nations have declared in the Preamble to their Charter [2] their determination ' to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small '.

[1] Foreign Office, June, 1947.
[2] ' Treaty Series No. 67 (1946),' [Cmd.] 7015.

This statement of faith is reinforced by many other passages in the Charter. Thus in Chapter I, wherein are declared the purposes and principles of the United Nations, is to be found the passage 'The purposes of the United Nations are . . . to achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion'. (Article 1, paragraph 3.)

Under Chapter IV, Article 13, the General Assembly 'shall initiate studies and make recommendations for the purpose of . . . assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.

Under Chapter IX, Article 55, 'with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.

Under Chapter X, Article 62, the Economic and Social Council 'may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all'.

Under Chapter XII, Article 76, one of the basic objectives of the trusteeship system shall be 'to encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the inter-dependence of the peoples of the world'.

Finally, in recognition that the human rights and fundamental freedoms referred to above require definition and that human rights and fundamental freedoms as so defined must be safeguarded, Article 68 of the Charter provides that the Economic and Social Council shall set up a commission for the promotion of human rights.

2. Human Rights in the Peace Treaties

The Peace Treaties signed at Paris on 10th February, 1947,[3] make specific reference to this question of human rights. For example, Article 15 of the Italian Treaty reads as follows:—

> 'Italy shall take all measures necessary to secure to all persons under Italian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting'.

[3] 'Miscellaneous No 1 (1947),' [Cmd.] 7022.

3. United Nations Discussions on Human Rights

The ancient and profound desire of mankind for the recognition and guarantee of human rights has hitherto been able to find expression only in the internal legal systems of individual States. This desire, intensified by the experiences of world war and the oppression of dictators, now finds, through the United Nations, the opportunity of being placed under the guarantee of international law. At Dumbarton Oaks, where in 1944 the tentative proposals for the United Nations Charter were prepared, a number of references were made to problems of a 'humanitarian' nature. When the United Nations met at San Francisco in 1945 to draw up their Charter it was clear that the opinion, not only of Governments but also of the common people, ran strongly in favour of a more direct reference to human rights and fundamental freedoms. The outcome of long and careful discussion is to be seen in the extracts from the Charter quoted above.

4. The United Nations Commission on Human Rights

In accordance with Article 68 of the Charter the Economic and Social Council, by a resolution of 21st June, 1946, established a Commission on Human Rights. This resolution provides that the work of the Commission shall be directed towards submitting proposals, recommendations and reports to the Council regarding—

(a) an international Bill of Rights,

(b) international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters,

(c) the protection of minorities,

(d) the prevention of discrimination on grounds of race, sex, language or religion,

(e) any other matter concerning human rights not covered by (a), (b), (c) and (d).

The Commission shall also make studies and recommendations and provide information and other services at the request of the Economic and Social Council.

Under powers given to it by the Economic and Social Council, the Commission on Human Rights, which held its first session in February and March 1947, decided to establish a sub-commission on freedom of information and of the press and a sub-commission on the prevention of discrimination and the protection of minorities. It should be noted at this point that a separate Commission has been established by the Economic and Social Council to consider the status of women.

5. The Preparation of an International Bill of Rights

As the result of recommendations made by the Commission on Human Rights, the Economic and Social Council decided at its fourth session in March 1947 that a Drafting Committee consisting of the representatives of eight members of the Commission, namely, Australia, Chile, China, France, the Lebanon, U.S.S.R., the United Kingdom and the United States, should meet prior to the second session of the Commission in order to prepare, on the basis of documentation supplied by the Secretary-General, a preliminary draft of the International Bill of Rights. This draft would then be passed to the full Commission to be further developed. It would then be circulated to all members of the United Nations for their observations, suggestions and proposals which would then be considered as the basis of a redraft, if necessary, first by the Drafting Committee at a second meeting and then by the full Commission. After this the draft would be passed to the Economic and Social Council for consideration with a view to recommending an International Bill of Human Rights to the General Assembly in 1948.

The Economic and Social Council decided that in preparing the necessary documentation the Secretary-General should use not only the draft Bills which had already been submitted but also any further drafts that might be submitted by members of the United Nations. During the discussions in the Economic and Social Council the delegate of the United Kingdom announced that a United Kingdom draft would be submitted at an early date.

6. The Nature of the Present Paper

The United Kingdom representative on the Commission on Human Rights is Lord Dukeston. A paper has been prepared, which is being communicated by Lord Dukeston to the Secretary-General of the United Nations under cover of a letter requesting that it shall be laid before the Drafting Committee when that body meets on 9th June, 1947. The text of the covering letter is given at Appendix 1. The paper, which is to be found at Appendix 2, consists of a draft resolution which, it is proposed, might be adopted by the General Assembly of the United Nations when considering the International Bill of Rights, a draft Bill in three parts, and an annex putting forward proposals regarding the functions of the Commission on Human Rights after the Bill has come into force.

As explained in the letter at Appendix 1 the present draft is put forward by the United Kingdom representative as constituting suggestions for the assistance of the Drafting Committee. That is to say, it is put forward as a basis of discussion and not as representing the final views of His Majesty's Government in the United Kingdom either as regards the provisions outlined in the draft or as regards any matters which are not contained in the draft. In view

of its provisional nature and of the considerable alterations which it is expected to undergo, the paper has not been submitted, at this stage, to the highest legal authorities in the United Kingdom. There are two main reasons why the first draft must have this purely provisional status. First, the Drafting Committee will have before it a number of drafts. These drafts may reveal certain important differences of view on what should be included in the Bill and what should not be included. It is not to be expected, therefore, that the draft produced by the Drafting Committee will be identical with any one of the drafts submitted to it. In the course of discussion in the Drafting Committee and, later, in the full commission, considerations may arise which will make it desirable to modify the present draft in some respects. Moreover, under the procedure adopted by the Economic and Social Council, all members of the United Nations will be given an opportunity of expressing their views at a fairly early stage in the process of drafting and it is desirable that these views should be taken into account when His Majesty's Government in the United Kingdom makes proposals for the final text. Finally, an International Bill of Rights is the concern not only of Governments but of all men everywhere. It is therefore right that Governments should not make a final decision until their peoples have had an opportunity of examining and commenting upon the various proposals.

APPENDIX 1

Letter to the Secretary-General of the United Nations from Lord Dukeston

I HAVE the pleasure of transmitting to you herewith, to be laid before the Drafting Committee of the Commission on Human Rights, the following documents:—

(a) A draft International Bill of Human Rights.

(b) A draft resolution which might be passed by the General Assembly when adopting an International Bill of Rights.

2. It is suggested that the International Bill of Rights should be prepared in the form of an instrument which would be approved by the Assembly and submitted to Governments for accession by members of the United Nations, by States parties to the Statute of the International Court of Justice, and by any other State whom the General Assembly of the United Nations shall, by resolution, declare to be eligible. The draft Bill itself requires little explanation. It is intended to contain an enumeration of the human rights and fundamental freedoms, provisions as regards execution and enforcement, and certain formal provisions which necessarily accompany the bringing of the Bill into force. The Assembly Resolution deals with a number of secondary matters which will assist in the execution of the Bill, but which should be approved in

a form which will allow for relatively simple amendment and adaptation. The proposals in the resolution regarding the furnishing of information by signatory States are of considerable importance in this respect.

3. It is understood that the purpose of the Drafting Committee is to produce texts for the consideration of the Human Rights Commission, and that the texts submitted by the Drafting Committee, being the result of the combined efforts of its members working for this purpose, will not bind any delegation which has taken part in the work of the Drafting Committee. In submitting the attached draft Bill and Assembly Resolution the United Kingdom Representative is making suggestions for the assistance of the Drafting Committee, and the draft must not be taken as representing the final views of His Majesty's Government in the United Kingdom either as regards the provisions which are contained in the United Kingdom drafts or as regards any matters which are not contained in those drafts.

APPENDIX 2

Draft of Resolution of General Assembly when Adopting the International Bill of Rights

I

(1) Whereas it is a purpose of the United Nations to achieve international co-operation as a means of encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; and

(2) Article 13 of the Charter provides that the General Assembly shall initiate studies and make recommendations for the purpose of assisting in the realisation of the said human rights and fundamental freedoms.

II

(1) Whereas, in conformity with Article 68 of the Charter, the Economic and Social Council set up a Commission to study and recommend measures for the promotion of human rights; and

(2) The said Human Rights Commission has reported and recommended the acceptance by all members of an International Bill of Human Rights.

III

(1) Whereas it is also an aim of the United Nations as defined in its Charter to achieve international co-operation in solving international problems of an economic, social, cultural and humanitarian

character and to achieve social progress and better standards of life in larger freedom; and

(2) It is through measures taken through the instrumentality of the Economic and Social Council and its organs and through specialised agencies in relationship with the United Nations that the United Nations is seeking to establish international co-operation for the achievement of this aim; and

(3) It is through the international co-operation so established that the United Nations can most effectively assist the realisation of the right of all persons to work, to education, to social security and similar social and economic rights, which cannot by their nature be defined in the form of legal obligations for States in an instrument such as the International Bill of Rights.

IV

The General Assembly expresses the opinion that human rights and fundamental freedoms can only be completely assured by the application of the rule of law and by the maintenance in every land of a judiciary, fully independent and safeguarded against all pressure, and that the provisions of an International Bill of Rights cannot be fulfilled unless the sanctity of the home and the privacy of correspondence are generally respected and unless at all trials the rights of the defence are scrupulously respected, including the principle that trials shall be held in public and that every man is presumed innocent until he is proved guilty.

V

Considering also that the promotion of human rights and fundamental freedoms will be assisted by full and accurate information on the position in every land with regard to these matters, and that such information should be published by the United Nations under conditions which will best guarantee its objectivity:

The General Assembly entrusts this function to the Commission for Human Rights and requests the Economic and Social Council to reconsider the terms of reference of the said Commission, having regard to the principles and directives set forth in Annex 2.

VI

Considering further that it is by defining human rights and fundamental freedoms and placing them under the protection of international law and the guarantee of the United Nations that the dignity and worth of the human person will be best secured :

The General Assembly approves the International Bill of Rights which forms Annex 1 to the present Resolution and recommends that all members should accept the obligations thereof.

ANNEX 1

International Bill of Human Rights

PREAMBLE

1. Whereas the peoples of the United Nations have reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person;

2. Whereas it is one of the purposes of the United Nations to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion;

3. Whereas all men are members of communities and as such have the duty to respect the rights of their fellow-men equally with their own;

4. Whereas the just claims of the State, which all men are under a duty to accept, must not prejudice the respect of man's right to freedom and equality before the law and the safeguard of human rights, which are primary and abiding conditions of all just government;

5. Whereas the denial of human rights and fundamental freedoms endangers the general welfare and friendly relations among nations and the enjoyment of such rights and freedoms by all persons must be secured by international law and protected by the organised community of States;

6. Whereas it is expedient to define more exactly the aforesaid human rights and fundamental freedoms and to make provision for their universal observance and protection:

Now, therefore, the States parties to this International Bill of Rights have accepted the following provisions:—

PART I

ARTICLE 1

The States parties hereto declare that they recognise the principles set forth in Part II of this Bill as human rights and fundamental freedoms founded on the general principles of law recognised by civilised nations.

Comment to Article 1, *Part I.*

The phrase at the end of this Article comes from Article 38 (1) (c) of the Statute of the International Court of Justice. This phrase in the Statute of the Court is with justification considered by many commentators to represent the same principle as the phrases 'law of nature' and '*jus gentium*' which play so great a part in the early development of international law. The conceptions both of the 'law of nature' and '*jus gentium*' have also played a considerable part in the conception of the fundamental rights of man.

Article 2

Every State is, by international law, under an obligation to ensure—

(a) that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless, the enjoyment of these human rights and fundamental freedoms;

(b) that any person whose rights or freedoms are violated should have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(c) that such remedies shall be enforceable by a judiciary whose independence is secured; and

(d) that its police and executive officers should act in support of the enjoyment of these rights and freedoms.

Comment to Article 2, Part I.

Proposals that the provisions of the Bill of Rights should be embodied in the constitutions of States parties to the Bill, or otherwise consecrated by special constitutional guarantees, are not practicable for all countries. Some countries, like the United Kingdom, have no rigid constitution and, as a matter of internal law, it is not possible to surround any provision with any special constitutional guarantee. No enactment can be given a greater authority than an Act of Parliament, and one Act of Parliament can repeal any other Act of Parliament. Therefore, the legal provisions which safeguard human rights can only have as their special safeguard the solemn international obligations undertaken in this Bill, together with the firm foundation which these principles have in the deepest convictions of Parliament and the people.

Article 3

On receipt of a request to this effect from the Secretary-General of the United Nations, made under the authority of a resolution of the General Assembly, the Government of any party to this Bill will supply an explanation, certified by the highest legal authorities of the State concerned, as to the manner in which the law of that State gives effect to any of the said provisions of this Bill of Rights.

Comment to Article 3.

Section V of the draft resolution to which this Bill is Annex 1 is intended to provide the authority referred to in line two of this Article.

Comment to Article 2 (a) and Article 3.

The expression 'law' is used in this draft as equivalent to the word 'droit', that is, anything a court will enforce, including statute law, regulations and common or customary law.

ARTICLE 4

(1) In time of war or other national emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.

(2) Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

ARTICLE 5

A failure by any State party hereto to fulfil the obligations under Article 2 is an injury to the community of States and a matter of concern to the United Nations as the community of States organised under the rule of law.

Comment to Article 5.

This article is meant to apply to failures of a substantial character. It is not intended to apply to failures of a trivial or technical character.

ARTICLE 6

(1) While declaring their readiness to consider the adoption of further procedures designed to strengthen the international protection of fundamental human rights and freedoms, the States parties hereto accept the right of any of them, acting in the interests of the community of States, to bring to the attention of the General Assembly of the United Nations any violation by any of them of the provisions of this Bill of Rights as constituting a situation likely to impair the general welfare or friendly relations amongst nations and as a violation of the purposes and principles of the United Nations within the meaning of Article 14 of the Charter.

(2) Any party hereto which is thus alleged to have violated the provisions of this Bill of Rights shall have the right to request the General Assembly to obtain the advisory opinion of the International Court of Justice thereon and to refrain from taking any further action on the matter until this opinion has been obtained, and if such a request is made the parties hereto agree that they are bound to support the request.

Comment to Article 6.

It would be possible to insert here an additional provision under which all parties to this Bill would agree that in the event of any alleged violation of the Bill being brought before the General Assembly they would support a proposal that the matter should first be considered by a committee composed only of members of the United Nations who are parties to the Bill.

Article 7

The parties hereto agree than any one of them which is found by a Resolution of the General Assembly adopted by a two-thirds majority persistently to have violated the provisions of this Bill of Rights should be deemed to have violated the principles of the Charter of the United Nations and therefore be liable to expulsion from the organisation under Article 6 of the Charter.

PART II

Definition of Human Rights and Fundamental Freedoms

Article 8

It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following on his conviction of a crime for which this penalty is provided by law.

Article 9

(1) No form of slavery shall be permitted.

(2) [A text on the subject of compulsory labour will be inserted here later.]

Article 10

(1) No person shall be deprived of his liberty save by an arrest which is effected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime or breach of the peace.

(2) Every person arrested and detained shall be brought without delay before a judge, who shall either try the case or decide, after hearing evidence, whether there is sufficient case to justfy that person's trial and if so whether his liberty shall be restored to him on bail.

(3) The period of detention pending trial shall not be unreasonably prolonged.

(4) The preceding provisions of this Article do not apply to (i) the lawful detention of a person sentenced after conviction to deprivation of liberty, or (ii) lawful detention of persons of unsound mind, or (iii) the lawful custody of minors, or (iv) the lawful arrest and detention of a person to prevent his effecting an unauthorised entry into the country.

(5) Every person who is deprived of his liberty shall have an effective remedy in the nature of 'habeas corpus' by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not justified.

(6) Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.

Article 11

Every person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country, including his own.

Comment to Article 11.

There may also be other outstanding obligations such as those relating to taxation or the maintenance of dependants, of which account should be taken here.

Article 12

No person shall be held guilty of any offence on account of acts or omissions which did not constitute such an offence at the time when they were committed.

Article 13

(1) Every person shall be free to hold any religious or other belief dictated by his conscience and to change his belief.

(2) Every person shall be free to practise, either alone or in community with other persons of like mind, any form of religious worship and observance, subject only to such restrictions, penalties or liabilities as are strictly necessary to prevent the commission of acts which offend laws passed in the interests of humanity and morals, to preserve public order and to ensure the rights and freedoms of other persons.

(3) Subject only to the same restrictions, every person of full age and sound mind shall be free to give and receive any form of religious teaching and to endeavour to persuade other persons of full age and sound mind of the truth of his beliefs, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

Article 14

(1) Every person shall be free to express and publish his ideas orally, in writing, in the form of art, or otherwise.

(2) Every person shall be free to receive and disseminate information of all kinds, including both facts, critical comment and ideas by books, newspapers, or oral instruction, and by the medium of all lawfully operated devices.

(3) The freedoms of speech and information referred to in the preceding paragraphs of this article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of government, or to promote disorder or crime; obscene publications; [publications aimed at the suppression of human rights and fundamental freedom]; publications injurious to the independence

of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.

Comment to Article 14.

The fundamental provisions of the Bill of Rights relating to freedom of speech and information will be completed by other agreements, resulting from the work of the sub-committee on Freedom of Information and the international conference on this subject.

Comments to Article 14 (3).

(a) The provision in paragraph 3 above, recognising the right of Governments to impose the necessary restrictions, penalties or liabilities on publications likely or intended to incite persons to alter by violence the system of government, is to be interpreted as strictly confined to such publications as advocate the use of violence, and does not apply to publications advocating a change of government or of the system of government by constitutional means.

(b) Some doubt is felt as to the suitability of the words 'publications aimed at the suppression of human rights and fundamental freedoms' from the point of view of drafting. It may be that these words afford a wider power for the limitation of freedom of publication than is necessary or desirable. On the other hand, it may be said that it would be inconsistent for a Bill of Rights whose whole object is to establish human rights and fundamental freedoms to prevent any Government, if it wished to do so, from taking steps against publications whose whole object was to destroy the rights and freedoms which it is the purpose of the Bill to establish. In the last analysis, perhaps, the best definition of a Nazi or Fascist régime is that it is a régime which does not recognise the dignity and worth of the human person and permit individuals to enjoy human rights and fundamental freedoms.

(c) In any case it will be observed that no Government is obliged by the Bill to make use of the powers of limitation which are provided in paragraph 3.

Article 15

All persons shall have the right to assemble peaceably for any lawful purpose, including the discussion of any matter on which under Article 14 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for the protection of life and property and to prevent disorders, the obstruction of traffic and of the free movement of others.

ARTICLE 16

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the State, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 14 the dissemination is unrestricted. The rights and freedoms set forth in Articles 13 and 14 shall be enjoyed by such associations.

Comment to Article 16.

The word " associations " is here used as the widest possible term and is intended to include the creation of entities having juridical personality.

Comment to Part II.

This part of this Bill will be completed by provisions prohibiting distinctions based on race, sex, language and religion. No attempt is made to draft these provisions in advance of the reports of the sub-committee on Discrimination and Minorities and also of the Commission on the Status of Women. In any case, Part II as drafted above in fact provides for absence of discrimination seeing that it uses the words ' all persons '. (See also Article 2 (a) : ' all persons under its jurisdiction, whether citizens, persons of foreign nationality or Stateless.')

PART III

ARTICLE 17

(1) This Bill of Rights is submitted, for the purpose of accession thereto, to every member of the United Nations, to every State party to the Statute of the International Court of Justice and to every other State whom the General Assembly of the United Nations shall, by resolution, declare to be eligible.

(2) Accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations and the Bill of Rights shall come into force as soon as . . . States members of the United Nations have deposited such instruments as regards those States and thereafter as regards each party on the date of the deposit of its instrument of accession.

(3) Every deposit of an instrument of accession shall be accompanied by a statement that this Bill had been approved in accordance with the constitutional processes of the State concerned for the acceptance of the obligations of a treaty and by a solemn declaration made by the Government of the State concerned that full and complete effect to the provisions of Part II is given by the law of that State.

(4) The Secretary-General shall inform all members of the United Nations and the other States referred to in paragraph 1 above of the deposit of each instrument of accession.

Comment to Article 17 (2).

The number to be given here should not be less than two-thirds of the members of the United Nations.

Article 18

(1) Amendments to this Bill of Rights shall come into force when they have been adopted by a vote of two-thirds of the members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties of this Bill.

(2) When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Bill which they have accepted by accession including earlier amendments which they have ratified.

ANNEX 2

(1) All information published by the United Nations relating to human rights should be approved by the Commission for Human Rights before publication. The Commission should be guided in this matter by the principle that accuracy and objectivity in information published is the first essential.

(2) Before any information relating to the position in any particular State is published, it should be transmitted to the Government of that State, which should be given a reasonable time in which to make any comments thereon which it desires. If the Government makes any comments and the Commission decides that publication of this information is nevertheless desirable, these comments should be published, together with the information to which they relate.

(3) By careful study and selection, the Commission should endeavour to reduce the frequency of the occasion when it transmits information to Governments for comments and also the volume thereof.

(4) Any explanations transmitted to the Secretary-General under Article 3 of the Bill of Rights and information given to the Secretary-General under Article 4 (2) will be published automatically. Requests to Governments for explanations under Article 3 shall be made on a decision of the Commission approved by the Economic and Social Council.

(5) The Commission should consider the desirability of appointing an expert committee to assist it in the performance of these functions.

Comment on Annex 2.

As Section 5 in the draft Resolution shows, it is proposed to leave to the Economic and Social Council the task of reviewing the terms of reference of the Commission on Human Rights in the light of the provisions of the Bill. Since the first task of the Commission under its existing terms of reference was the preparation of the draft Bill, it is obvious that, when the Bill comes into operation, the Commission must act under new terms of reference which will be drawn up having particular regard to the provisions of the Bill. All that the draft Assembly Resolution does is to lay down certain provisions which must in any case be included in the future terms of reference. The Economic and Social Council would have to consider the manner in which petitions on Human Rights questions received by the Secretary-General should be dealt with and whether, and if so under what conditions, they should be passed to the Commission. Experience of the minorities procedure of the League of Nations has shown that this is a question which requires very mature consideration and that inappropriate procedure may tend to damage rather than further the advancement of Human Rights. In any case, it is suggested that provisions on these matters should not be included in the Bill itself, as such provisions should be capable of easy adaptation and amendment.

AGREEMENT BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL CIVIL AVIATION ORGANISATION [1]

Preamble

Article 57 of the Charter of the United Nations makes provision for bringing the specialised agencies, established by intergovernmental agreement and having wide international responsibilities as defined in their basic instruments in economic, social, cultural, educational, health and related fields, into relationship with the United Nations.

Article 64 of the Convention on International Civil Aviation provides that the International Civil Aviation Organisation may, with respect to air matters within its competence directly affecting world security, enter into appropriate arrangements with any general organisation set up by the nations of the world to preserve peace. Article 65 of the Convention provides that the Organisation may enter into agreements with international bodies for the maintenance of common services, for common arrangements concerning personnel and for the facilitation of its work.

Therefore the United Nations and the International Civil Aviation Organisation agree as follows:—

[1] U.S. Doc. 4013; Al. CP/1/March 26, 1947. Addendum 1.

Article 1

The United Nations recognises the International Civil Aviation Organisation as the specialised agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein.

Article 2

Applications for Membership by Certain States

Any application submitted to the International Civil Aviation Organisation by States other than those provided for in Articles 91 and 92 (a) of the Convention on International Civil Aviation to become parties to the Convention, shall be immediately transmitted by the Secretariat of the Organisation to the General Assembly of the United Nations. The General Assembly may recommend the rejection of such application and any such recommendation shall be accepted by the Organisation. If no such recommendation is made by the General Assembly at the first session following receipt of the application, the application shall be decided upon by the Organisation in accordance with the procedure established in Article 93 of the Convention.

Article 3

Reciprocal Representation

1. Representatives of the United Nations shall be invited to attend the meetings of the Assembly of the International Civil Aviation Organisation, the Council of the Organisation and their commissions and committees and such general, regional or other special meetings as the Organisation may convene, and to participate, without vote, in the deliberations of these bodies.

2. Representatives of the International Civil Aviation Organisation shall be invited to attend meetings of the Economic and Social Council and of its commissions and committees and to participate, without vote, in the deliberations of these bodies with respect to items on their agenda relating to civil aviation matters.

3. Representatives of the International Civil Aviation Organisation shall be invited to attend meetings of the General Assembly of the United Nations for the purposes of consultation on civil aviation matters.

4. Representatives of the International Civil Aviation Organisation shall be invited to attend meetings of the main committees of the General Assembly when civil aviation matters are under discussion and to participate, without vote, in such discussions.

5. Representatives of the International Civil Aviation Organisation shall be invited to attend meetings of the Trusteeship Council of the United Nations and to participate, without vote, in the

deliberations thereof, with respect to items on its agenda relating to civil aviation matters.

6. Written statements submitted by the International Civil Aviation Organisation on matters relating to civil aviation shall be distributed as soon as possible by the Secretariat of the United Nations to all members of the principal and subsidiary organs and their commissions or committees of the United Nations, as appropriate. Similarly, written statements of any of the principal or subsidiary organs and their commissions or committees of the United Nations shall be distributed as soon as possible by the Secretariat of the Organisation to all members of the Assembly or Council of the Organisation as appropriate.

ARTICLE 4

Proposal of Agenda Items

After such preliminary consultation as may be necessary, the International Civil Aviation Organisation shall include on the agenda of the Assembly or Council of the Organisation items proposed to it by the United Nations, and the Economic and Social Council and its commissions and the Trusteeship Council shall include on their agenda items proposed by the Assembly or Council of the Organisation.

ARTICLE 5

Recommendations of the United Nations

1. The International Civil Aviation Organisation, having regard to the obligation of the United Nations to promote the objectives set forth in Article 55 of the Charter and the function and power of the Economic and Social Council under Article 62 of the Charter to make or initiate studies and reports with respect to international, economic, social, cultural, educational, health and related matters and to make recommendations concerning these matters to the specialised agencies concerned, and having regard also to the responsibility of the United Nations, under Articles 58 and 63 of the Charter, to make recommendations for the co-ordination of the policies and activities of such specialised agencies, agrees to arrange for the submission, as soon as possible, to its appropriate organ of all formal recommendations which the United Nations may make to it.

2. The International Civil Aviation Organisation agrees to enter into consultation with the United Nations upon request with respect to such recommendations, and in due course to report to the United Nations on the action taken by the Organisation or by its members to give effect to such recommendations, or on the other results of their consideration.

3. The International Civil Aviation Organisation affirms its intention of co-operating in whatever measures may be necessary to make co-ordination of the activities of specialised agencies and those of the United Nations fully effective. In particular, it agrees to participate in, and to co-operate with any body or bodies which the Economic and Social Council may establish for the purpose of facilitating such co-ordination and to furnish such information as may be required for the carrying out of this purpose.

ARTICLE 6

Exchange of Information and Documents

1. Subject to such arrangements as may be necessary for the safeguarding of confidential material, the fullest and promptest exchange of information and documents shall be made between the United Nations and the International Civil Aviation Organisation.

2. Without prejudice to the generality of the provisions of paragraph 1 :

(a) The International Civil Aviation Organisation agrees to transmit to the United Nations regular reports on its activities.

(b) The International Civil Aviation Organisation agrees to comply to the fullest extent practicable with any request which the United Nations may make for the furnishing of special reports, studies or information, subject to the condition set forth in Article 16, and

(c) The Secretary-General of the United Nations shall, upon request, consult with the appropriate officer of the Organisation with respect to the furnishing to the Organisation of such information as may be of special interest to it.

ARTICLE 7

Assistance to the Security Council

The International Civil Aviation Organisation agrees to co-operate with the Economic and Social Council in furnishing such information and rendering such assistance to the Security Council as that Council may request including assistance in carrying out decisions of the Security Council for the maintenance or restoration of international peace and security.

ARTICLE 8

Assistance to the Trusteeship Council

The International Civil Aviation Organisation agrees to co-operate with the Trusteeship Council in the carrying out of its functions and in particular agrees that it will, to the greatest extent possible, render such assistance as the Trusteeship Council may request in regard to matters with which the Organisation is concerned.

ARTICLE 9

Non-self-governing Territories

The International Civil Aviation Organisation agrees to co-operate with the United Nations in giving effect to the principles and obligations set forth in Chapter XI of the Charter with regard to matters affecting the well-being and development of the peoples of non-self-governing territories.

ARTICLE 10

Relations with the International Court of Justice

1. The International Civil Aviation Organisation agrees to furnish any information which may be requested by the International Court of Justice in pursuance of Article 34 of the Statute of the Court.

2. The General Assembly authorises the Organisation to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities other than questions concerning the mutual relationships of the Organisation and the United Nations or other specialised agencies.

3. Such request may be addressed to the Court by the Assembly or the Council of the Organisation.

4. When requesting the International Court of Justice to give an advisory opinion the Organisation shall inform the Economic and Social Council of the request.

ARTICLE 11

Headquarters and Regional Offices

1. The International Civil Aviation Organisation, having regard to the desirability of the headquarters of specialised agencies being situated at the permanent seat of the United Nations and to the advantages that flow from such centralisation, agrees to consult the United Nations before making any further decision concerning the location of its permanent headquarters.

2. Having due regard to the special needs of International Civil Aviation, any regional or branch offices which the International Civil Aviation Organisation may establish shall, so far as practicable, be closely associated with such regional or branch offices as the United Nations may establish.

ARTICLE 12

Personnel Arrangements

1. The United Nations and the International Civil Aviation Organisation recognise that the eventual development of a single unified international civil service is desirable from the standpoint

of effective administrative co-ordination, and with this end in view agree to develop common personnel standards, methods and arrangements designed to avoid unjustified differences in terms and conditions of employment, to avoid competition in recruitment of personnel, and to facilitate interchange of personnel in order to obtain the maximum benefit from their services.

2. The United Nations and the International Civil Aviation Organisation agree to co-operate to the fullest extent possible in achieving these ends and in particular they agree to :

(a) consult together concerning the establishment of an International Civil Service Commission to advise on the means by which common standards of recruitment in the secretariats of the United Nations and of the specialised agencies may be ensured;

(b) consult together concerning other matters relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scales and allowances, retirement and pension rights and staff regulations and rules with a view to securing as much uniformity in these matters as shall be found practicable;

(c) co-operate in the interchange of personnel, when desirable, on a temporary or a permanent basis, making due provision for the retention of seniority and pension rights;

(d) co-operate in the establishment and operation of suitable machinery for the settlement of disputes arising in connection with the employment of personnel and related matters.

Article 13

Statistical Services

1. The United Nations and the International Civil Aviation Organisation agree to strive for maximum co-operation, the elimination of all undesirable duplication between them, and most efficient use of their technical personnel in their respective collection, analysis, publication, standardisation, improvement and dissemination of statistical information. They agree to combine their efforts to secure the greatest possible usefulness and utilisation of statistical information and to minimise the burdens placed upon national governments and other organisations from which such information may be collected.

2. The International Civil Aviation Organisation recognises the United Nations as the central agency for the collection, analysis, publication, standardisation, improvement and dissemination of statistics serving the general purposes of international organisations.

3. The United Nations recognises the International Civil Aviation Organisation as the central agency responsible for the collection, analysis, publication, standardisation, improvement and dissemination of statistics within its special sphere, without

prejudice to the rights of the United Nations to concern itself with such statistics so far as they may be essential for its own purposes or for the improvement of statistics throughout the world.

4. The United Nations shall in consultation with the International Civil Aviation Organisation and with the other specialised agencies where appropriate develop administrative instruments and procedures through which effective statistical co-operation may be secured between the United Nations and the agencies brought into relationship with it.

5. It is recognised as desirable that the collection of statistical information shall not be duplicated by the United Nations or any of its specialised agencies whenever it is practicable for any of them to utilise information or material which another may have available.

6. In order to build up a central collection of statistical information for general use, it is agreed that data supplied to the International Civil Aviation Organisation for incorporation in its basic statistical series or special reports should so far as practicable be made available to the United Nations.

7. It is agreed that data supplied to the United Nations for incorporation in its basic statistical series or special reports should so far as practicable and appropriate be made available to the International Civil Aviation Organisation.

ARTICLE 14

Administrative and Technical Services

1. The United Nations and the International Civil Aviation Organisation recognise the desirability, in the interest of administrative and technical uniformity and of the most efficient use of personnel and resources, of avoiding whenever possible the establishment and operation of competitive or overlapping facilities and services among the United Nations and the specialised agencies.

2. Accordingly, the United Nations and the International Civil Aviation Organisation agree to consult together concerning the establishment and use of common administrative and technical services and facilities in addition to those referred to in Articles 12, 13 and 15, in so far as the establishment and use of such services may from time to time be found practicable and appropriate.

3. Arrangements shall be made between the United Nations and the International Civil Aviation Organisation in regard to the registration and deposit of official documents.

ARTICLE 15

Budgetary and Financial Arrangements

1. The International Civil Aviation Organisation recognises the desirability of establishing close budgetary and financial relationships with the United Nations in order that the administrative

operations of the United Nations and of the specialised agencies shall be carried out in the most efficient and economical manner possible, and that the maximum measure of co-ordination and uniformity with respect to these operations shall be secured.

2. The United Nations and the International Civil Aviation Organisation agree to co-operate to the fullest extent possible in achieving these ends and to consult together concerning the desirability of making appropriate arrangements for the inclusion of the budget of the Organisation within a general budget of the United Nations. Any such arrangements which may be made shall be defined in a supplementary agreement between the two Organisations.

3. The Secretary-General of the United Nations and the appropriate officer of the International Civil Aviation Organisation shall arrange for consultation in connection with the preparation of the budget.

4. The International Civil Aviation Organisation agrees to transmit its proposed budget to the United Nations annually at the same time as such budget is transmitted to its members. The General Assembly shall examine the administrative budget or proposed budget of the Organisation and may make such recommendations as it may consider necessary.

5. Representatives of the International Civil Aviation Organisation shall be entitled to participate, without vote, in the deliberations of the General Assembly or any committee thereof at all times when the budget of the Organisation or general administrative or financial questions affecting the Organisation are under consideration.

6. The United Nations may undertake the collection of contributions from those members of the International Civil Aviation Organisation which are also members of the United Nations in accordance with such arrangements as may be defined by a later agreement between the United Nations and the Organisation.

7. The United Nations shall, upon its own initiative or upon the request of the International Civil Aviation Organisation arrange for studies to be undertaken concerning other financial and fiscal questions of interest to the Organisation and to other specialised agencies with a view to the provision of common services and the securing of uniformity in such matters.

8. The International Civil Aviation Organisation agrees to conform as far as may be practicable to standard practices and forms recommended by the United Nations.

Article 16

Financing of Special Services

1. In the event of the International Civil Aviation Organisation being faced with the necessity of incurring substantial extra

expense as a result of any request which the United Nations may make for special reports, studies of assistance in accordance with Articles 6, 7, 8, or with other provisions of this Agreement, consultation shall take place with a view to determining the most equitable manner in which such expense shall be borne.

2. Consultation between the United Nations and the International Civil Aviation Organisation shall similarly take place with a view to making such arrangements as may be found equitable for covering the cost of central administrative, technical or fiscal services or facilities or other special assistance provided by the United Nations.

Article 17

Inter-Agency Agreements

The International Civil Aviation Organisation agrees to inform the Economic and Social Council of the nature and scope of any formal agreement between the Organisation and any other specialised agency, inter-governmental organisation or non-governmental organisation and to inform the Economic and Social Council before any such agreement is concluded.

Article 18

Liaison

1. The United Nations and the International Civil Aviation Organisation agree to the foregoing provisions in the belief that they will contribute to the maintenance of effective liaison between the two Organisations. They affirm their intention of taking whatever further measure may be necessary to make this liaison fully effective.

2. The liaison arrangements provided for in the foregoing Articles of this Agreement shall apply as far as appropriate to the relations between such branch or regional offices as may be established by the two Organisations as well as between their headquarters.

Article 19

Implementation of the Agreement

The Secretary-General of the United Nations and the appropriate officer of the International Civil Aviation Organisation may enter into such supplementary arrangements for the implementation of this Agreement as may be found desirable in the light of the operating experience of the two Organisations.

ARTICLE 20

Other Arrangements

The present Agreement shall not preclude the conclusion of further appropriate arrangements between the International Civil Aviation Organisation and the United Nations with respect to air matters within the competence of the Organisation directly affecting world security as contemplated in the Convention on International Civil Aviation.

ARTICLE 21

Revision

This Agreement shall be subject to revision by agreement between the United Nations and the International Civil Aviation Organisation.

ARTICLE 22

Entry into Force

This Agreement shall come into force on its approval by the General Assembly of the United Nations and the Assembly of the International Civil Aviation Organisation.

New York, 30 September 1946

Signed: Roland Lebeau
Acting Chairman of the
Committee of the Economic and
Social Council on Negotiations
with Specialised Agencies.

Sir James Cotton,
Chairman of the Negotiating
Delegation of the Provisional
International Civil Aviation
Organisation.

INTER-AMERICAN CONFERENCE FOR THE MAINTENANCE OF CONTINENTAL PEACE AND SECURITY

INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE SIGNED AT RIO DE JANEIRO ON SEPTEMBER 2, 1947 [1]

In the name of their peoples, the Governments represented at the Inter-American Conference for the Maintenance of Continental Peace and Security, inspired by the desire of consolidating and strengthening their relations of friendship and good neighborliness, and

[1] U.S. Department of State, September 5, 1947, No. 720.

CONSIDERING:

That Resolution VIII of the Inter-American Conference on Problems of War and Peace, which met in Mexico City, recommended the conclusion of a treaty to prevent and repel threats and acts of aggression against any of the countries of America;

That the High Contracting Parties reiterate their will to remain united in an Inter-American system consistent with the purposes and principles of the United Nations, and reaffirm the existence of the agreement which they have concluded concerning those matters relating to the maintenance of international peace and security which are appropriate for regional action;

That the High Contracting Parties reaffirm their adherence to the principles of Inter-American solidarity and co-operation, and especially to those set forth in the preamble and declarations of the Act of Chapultepec, all of which should be understood to be accepted as standards of their mutual relations and as the juridical basis of the Inter-American system;

That the American States propose, in order to improve the procedures for the pacific settlement of their controversies, to conclude the treaty concerning the 'Inter-American Peace System' envisaged in Resolution XXXIX of the Inter-American Conference on Problems of War and Peace;

That the obligation of mutual assistance and common defence of the American Republics is essentially related to their democratic ideals and to their will to co-operate permanently in the fulfilment of the principles and purposes of a policy of peace;

That the American regional community affirms as a manifest truth that juridical organisation is a necessary prerequisite of security and peace, and that peace is founded on justice and moral order and, consequently, on the international recognition and protection of human rights and freedoms, on the indispensable well-being of the people, and on the effectiveness of democracy for the international realisation of justice and security;

In conformity with the objectives stated above and in order to assure peace, through adequate means to provide for effective reciprocal assistance to meet armed attacks against any American State, and in order to deal with threats of aggression against any of them, have resolved to conclude the following Treaty:

Article 1

The High Contracting Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty.

Article 2

As a consequence of the principle set forth in the preceding article, the High Contracting Parties undertake to submit every controversy which may arise between them to methods of peaceful settlement and to endeavour to settle such controversies among themselves by means of the procedures in force in the Inter-American System before referring them to the General Assembly or the Security Council of the United Nations.

AGGRESSION

Article 3

1. The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States, and consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations.

2. On the request of the State or States directly attacked and until the decision of the Organ of Consultation of the Inter-American System, each one of the Contracting Parties may determine the immediate measures which it may individually adopt in fulfilment of the obligation contained in the preceding paragraph and in accordance with the principle of continental solidarity. The Organ of Consultation shall meet without delay for the purpose of examining those measures and agreeing upon the measures of a collective character that should be adopted.

3. The provisions of this Article shall be applied in case of any armed attack which takes place within the region described in Article 4 or within the territory of an American State. When the attack takes place outside of said areas, the provisions of Article 6 shall be applied.

4. Measures of self-defence provided for under this Article may be taken until the Security Council of United Nations has taken the measures necessary to maintain international peace and security.

Article 4

The region to which this Treaty refers is bounded as follows: Beginning at the North Pole; thence due south to a point 74 degrees north latitude, 10 degrees west longitude; thence by a rhumb line to a point 47 degrees 30 minutes north latitude, 50 degrees west longitude; thence by a rhumb line to a point 35 degrees north latitude, 60 degrees west longitude; thence due south to a point in 20 degrees north latitude; thence by a rhumb line to a point 5 degrees north latitude, 24 degrees west longitude; thence due south to the South Pole; thence due north to a point 30 degrees

south latitude, 90 degrees west longitude; thence by a rhumb line to a point on the Equator at 97 degrees west longitude; thence by a rhumb line to a point 15 degrees north latitude, 120 degrees west longitude; thence by a rhumb line to a point 50 degrees north latitude, 170 degrees east longitude; thence due north to a point in 54 degrees north latitude; thence by a rhumb line to a point 65 degrees 30 minutes north latitude, 168 degrees 58 minutes 5 seconds west longitude; thence due north to the North Pole.

Article 5

The High Contracting Parties shall immediately send to the Security Council of the United Nations, in conformity with Articles 51 and 54 of the Charter of the United Nations, complete information concerning the activities undertaken or in contemplation in the exercise of the right of self-defence or for the purpose of maintaining inter-American peace and security.

Article 6

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an intra-continental or extra-continental conflict, or by any other fact or situation that might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defence and for the maintenance of the peace and security of the Continent.

Article 7

In the case of a conflict between two or more American States, without prejudice to the right of self-defence in conformity with Article 51 of the Charter of the United Nations, the High Contracting Parties, meeting in consultation shall call upon the contending States to suspend hostilities and restore matters to the *status quo ante bellum*, and shall take in addition all other necessary measures to re-establish or maintain inter-American peace and security and for the solution of the conflict by peaceful means. The rejection of the pacifying action will be considered in the determination of the aggressor and in the application of the measures which the consultative meeting may agree upon.

Article 8

For the purposes of this Treaty, the measures on which the Organ of Consultation may agree will comprise one or more of the following: Recall of chiefs of diplomatic missions; breaking of

diplomatic relations; breaking of consular relations or of rail, sea, air, postal, telegraphic, telephonic, and radio-telephonic or radio-telegraphic communications; and use of armed force.

Article 9

In addition to other acts which the Organ of Consultation may characterise as aggression, the following shall be considered as such:

(a) Unprovoked armed attack by a State against the territory, the people, or the land, sea or air forces of another State;

(b) Invasion, by the armed forces of a State, of the territory of an American State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State.

Article 10

None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the High Contracting Parties under the Charter of the United Nations.

Article 11

The consultations to which this Treaty refers shall be carried out by means of the Meetings of Ministers of Foreign Affairs of the American republics which have ratified the Treaty, or in the manner or by the Organ which in the future may be agreed upon.

Article 12

The Governing Board of the Pan-American Union may act provisionally as an Organ of Consultation until the meeting of the Organ of Consultation referred to in the preceding Article takes place.

Article 13

The consultations shall be initiated on the request addressed to the Governing Board of the Pan-American Union by any of the Signatory States which has ratified the Treaty.

Article 14

In the voting referred to in this Treaty only the representatives of the Signatory States which have ratified the Treaty may take part.

Article 15

The Governing Board of the Pan-American Union shall act in all matters concerning this Treaty as an organ of liaison among the Signatory States which have ratified this Treaty and between these States and the United Nations.

Article 16

The decisions of the Governing Board of the Pan-American Union referred to in Articles 13 and 15 above shall be taken by an absolute majority of the Members entitled to vote.

Article 17

The Organ of Consultation shall take its decisions by a vote of two-thirds of the Signatory States which have ratified the Treaty.

Article 18

In the case of a situation or dispute between American States, the parties directly interested shall be excluded from the voting referred to in the two preceding Articles.

Article 19

To constitute a quorum in all the meetings referred to in the previous Articles it shall be necessary that the number of States represented shall be at least equal to the number of votes necessary for the adoption of the decision.

Article 20

Decisions which require the application of the measures specified in Article 8 shall be binding upon all the Signatory States which have ratified this treaty, except that no State shall be required to use armed force without its consent.

Article 21

The measures agreed upon by the Organ of Consultation shall be executed through the procedures and agencies now existing or those which may in future be established.

Article 22

This Treaty shall enter into effect between the States which ratify it as soon as the ratifications of two-thirds of the Signatory States have been deposited.

Article 23

This Treaty is open for signature by the American States at the city of Rio de Janeiro, and shall be ratified by the Signatory States as soon as possible in accordance with their respective constitutional processes. The ratifications shall be deposited with the Pan-American Union, which shall notify the Signatory States of each deposit. Such notification shall be considered as an exchange of ratifications.

Article 24

The present Treaty shall be registered with the Secretariat of the United Nations through the Pan-American Union, when two-thirds of the Signatory States have deposited their ratification.

Article 25

This Treaty shall remain in force indefinitely, but may be denounced by any High Contracting Party by a notification in writing to the Pan-American Union, which shall inform all the other High Contracting Parties of each notification of denunciation received. After the expiration of two years from the date of the receipt by the Pan-American Union of a notification of denunciation by any High Contracting Party, the present Treaty shall cease to be in force with respect to such State, but shall remain in full force and effect with respect to all the other High Contracting Parties.

Article 26

The principles and fundamental provisions of this Treaty shall be incorporated in the Organic Pact of the Inter-American System.

In witness whereof, the undersigned Plenipotentiaries, having deposited their full powers found to be in due and proper form, sign this Treaty on behalf of their respective Governments on the dates appearing opposite their signatures.

Reservation of Honduras:

The Delegation of Honduras, in signing the present Treaty and in connection with Article 9, section (b), does so with the reservation that the boundary between Honduras and Nicaragua is definitely demarcated by the Joint Boundary Commission of nineteen hundred and nineteen hundred and one, starting from a point in the Gulf of Fonseca, in the Pacific Ocean, to Portillo de Teotecacinte and, from this point to the Atlantic, by the line that His Majesty the King of Spain's arbitral award established on the twenty-third of December of nineteen hundred and six.

INTER-AMERICAN CONFERENCE FOR THE MAINTENANCE OF CONTINENTAL PEACE AND SECURITY

RIO DE JANEIRO, BRAZIL

FINAL ACT

The American Republics, desirous of maintaining the peace and security of the Continent, decided in accordance with Resolution VIII of the Inter-American Conference on Problems of War and Peace, which met at Mexico City in 1945, to hold a Conference to give permanent form to the principles contained in the Act of Chapultepec, and for that purpose designated their Plenipotentiaries who met in Petropolis, State of Rio de Janeiro, from August 15 to September 2, 1947.

THE PAN-AMERICAN IDEAL AND THE UNITED NATIONS

The Inter-American Conference for the Maintenance of Continental Peace and Security

DECLARES :

That it reiterates its confidence in the principles of justice and international law and in the sentiments of concord which govern relations among the Nations of the Continent and expresses the hope that these principles and sentiments may help to unite and coordinate the efforts which the United Nations is making to strengthen universal peace.

PACIFIC SYSTEM OF SECURITY

WHEREAS :

Peace is the realisation of justice based on moral order and guaranteed by law,

The Inter-American Conference for the Maintenance of Continental Peace and Security

RECOMMENDS :

That at the Ninth International Conference of American States to be held shortly at Bogota, there be studied with a view to approval, institutions which may give effectiveness to a pacific system of security and among them compulsory arbitration for any dispute which may endanger peace and which is not of a juridical nature.

ARMAMENTS AND THE OBLIGATIONS CREATED UNDER THE TREATY

The Inter-American Conference for the Maintenance of Continental Peace and Security.

Declares :

That its primary purpose as well as that of the Treaty which it has concluded is to assure the peace and security of the Continent and, consequently, that no stipulation of the Treaty nor any of the obligations created under it should be interpreted as justifying excessive armaments or may be invoked as a reason for the creation or maintenance of armaments or armed forces beyond those required for common defence in the interest of peace and security.

PREAMBLE OF THE ORGANIC PACT OF THE INTER-AMERICAN SYSTEM

The Inter-American Conference for the Maintenance of Continental Peace and Security

Recommends :

That the Ninth International Conference of American States, in drafting the Preamble of the Organic Pact of the Inter-American System, consider the following *consideranda* proposed by the Delegation of Peru:

'The High Contracting Parties, representing their peoples,

Determined to continue encouraging the peaceful advance of their peoples toward the complete redemption of the Continent through the constant practice of loyal and understanding co-operation, free of all ambitions of power;

Inspired by an unqualified desire to live in peace in order to dignify the life and labours of the American man through the prevalence of goodness and morality and through the indispensable fulfilment of his fundamental right to tranquillity and well-being;

Aware of the necessity for providing a complete and unified defence of the liberty, independence, democracy, law and the material goods accumulated within the Continent by the genius and labour of its sons;

Conscious that the provisions for defence must respect, as a natural corollary of love or peace, the strict requirements of what is necessary and appropriate to the objective, without prejudicing the fundamental principle of the American juridical structure and without contradicting the unanimous desire for peace to which this structure is dedicated;' . . .

AMERICAN EDUCATIONAL CHARTER FOR PEACE

Whereas :

That the Constitution of the United Nations Organisation for Education, Science and Culture establishes in its introductory clauses the following postulate: that since wars begin in the minds of men, it is in the minds of men that the bulwarks of peace should be erected, and that this Organisation has the purpose of contributing to international peace and security through collaboration

among the nations by means of education, science and culture, strengthening universal respect for justice, the rule of law, human rights and fundamental liberties;

That the Inter-American Conference on Problems of War and Peace, in its Resolution XXIX, considers that peace cannot rest exclusively on political and economic measures; that the Inter-American System cannot develop and be strengthened as long as the citizens of the different Republics of this Continent are not profoundly imbued with the principles of peace, justice and equality among States and individuals, and that the Declaration of Mexico consecrates the principle that education and material well-being are indispensable to the development of democracy;

That for the maintenance of the peace and security of the Continent, in addition to treaties of a political and economic character, it is necessary for the American Nations to harmonise the moral standards of their educational systems with a set of principles common to all, to promote understanding and closer relations among the American peoples and to intensify the training of citizens through a sound orientation of the will and intelligence toward the strengthening of peace,

The Inter-American Conference for the Maintenance of Continental Peace and Security

RESOLVES:

To entrust the formulation of the American Educational Charter for Peace to the Governing Board of the Pan American Union for presentation to the Ninth International American Conference, for consideration and study.

ECONOMIC CO-OPERATION

WHEREAS:

Economic security which is indispensable for the progress of all the American peoples, is, at all times, the best guarantee of political security and of the success of their joint efforts for the maintenance of Continental peace.

The Inter-American Conference for the Maintenance of Continental Peace and Security

RESOLVES:

1. That the Inter-American Economic and Social Council prepare a basic draft agreement on Inter-American economic co-operation, in order that the text be submitted to the Ninth International Conference of American States to be held at Bogotá.

2. That, for this purpose, the governments of the American republics designate to the Inter-American Economic and Social Council, in addition to their representatives or advisors, specialists in economic and financial affairs.

3. That a special economic conference be called during the last half of 1948, on the date which shall be fixed by the Ninth International Conference of American States. The purpose of this special conference shall be to consider the best procedures for carrying out the agreement which may have been concluded and to examine any measures which tend to make Inter-American economic co-operation more effective.

STATEMENTS

ARGENTINA:

The Argentine Delegation declares that within the water adjacent to the South American continent, along the coasts belonging to the Argentine Republic in the so-called Security Zone, it does not recognise the existence of colonies or possessions of European countries and it adds that it especially reserves and maintains intact the legitimate title and rights of the Argentine Republic to the Falkland (Malvinas) Islands, the South Georgia Islands, the South Sandwich Islands, and the lands included in the Argentine Antarctic sector, over which the Republic exercises the corresponding sovereignty.

GUATEMALA:

Guatemala wishes to place on record that it does not recognise any right of legal sovereignty of Great Britain over the territory of Belice, called British Honduras, included in the Security Zone, and that once again, it expressly reserves its rights which are derived from the Constitution of the Republic, historical documents, juridical arguments and principles of equity which have on appropriate occasions been laid before the universal conscience.

MEXICO:

Only because the Delegation of Guatemala has seen fit to make the preceding declaration, the Delegation of Mexico finds it necessary to reiterate that, in case there should occur a change in the status of Belice, there cannot fail to be taken into account the rights of Mexico to a part of the said territory, in accordance with historical and juridical precedents.

CHILE:

The Delegation of Chile declares that, within the waters adjacent to the South American continent, in the extension of coast belonging to the Republic of Chile, comprised within the so-called Security Zone, it does not recognise the existence of colonies or possessions of European countries and it adds that it specially reserves and maintains intact the legitimate title and rights of the Republic of Chile to the lands included in the Chilean Antarctic zone, over which the Republic exercises the corresponding sovereignty.

UNITED STATES OF AMERICA:

With reference to the reservations made by other delegations concerning territories located within the region defined in the treaty, their boundaries, and questions of sovereignty over them, the Delegation of the United States of America wishes to record its position that the treaty of Rio de Janeiro has no effect upon the sovereignty, national or international status of any of the territories included in the region defined in Article 4 of the Treaty.

The Secretary-General shall deposit the original in the files of the Ministry of Foreign Relations of Brazil, which will send certified copies to the Governments of the American Republics and to the Pan-American Union.

In witness whereof, the Plenipotentiaries listed above sign the present Final Act, written in English, Portuguese, Spanish and French, in Rio de Janeiro, Brazil, on the second of September nineteen hundred and forty-seven.

[The Signatories to the Final Act, in the order of precedence determined by lot, were: The Dominican Republic, Guatemala, Costa Rica, Peru, El Salvador, Panama, Paraguay, Venezuela, Chile, Honduras, Cuba, Bolivia, Colombia, Mexico, Ecuador, Haiti, Uruguay, United States of America, Argentina and Brazil.]

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